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DIRECT TV BROADCASTS THROUGH SATELLITE AND THE PROTECTION OF STATE INTERESTS

Christo Karakashev

Communications play a key role in the flow of information, data and ideas. They are one of the chief element of infrastructure, leading to social changes and economic development. The role of communications increased tremendously with the advent of direct TV broadcasts through satellites which are a powerful means of diffusing information, knowledge and education, as well as of recreation and fun.

An important characteristic of direct TV broadcasts is that various states can broadcast programmes to be received by anyone in the world. In other words these broadcasts do not reckon with state borders and political systems.

Another characteristic of the direct TV broadcasts is that at the present stage there are no technical means, or they are so imperfect or expensive, which are able to jam or hinder the reception of direct TV broadcasts.

The peculiarity of these broadcasts is their ability to exceed to a large extent the possibilities of current TV. Because of their obvious and potential possibilities direct TV broadcasts create a complicated set of problems of internal and international character, including economic, political, ideological, legal, cultural and other aspects.

In a major scale these broadcasts can bring to an improvement of international climate, detente, peace and security in the world, good neighbourly relations among nations and mutually beneficial cooperation among states. At the same time, if unlawfully used by reactionary and aggressive forces, they can bring great damage to humanity.

Assessing both the positive and negative possibilities of these broadcasts, the progressive and peace loving nations try to channel them and cut short the attempts for their unlawful use.

For many years the United Nations, UNESCO and other international bodies wage a complicated and persistent struggle to create judicial norms and a legal regime for the direct TV broadcasts. Within these organizations the socialist countries jointly with other progressive forces have initiated the elaboration of a number of documents aimed at using the direct TV broadcasts for promoting peace and mutual understanding, at prohibiting the propagation of war and the subversive interference in the affairs of sovereign states as one of the most important elements of protecting state interests.

Back in 1947 the UN General Assembly adopted at the initiative of the Soviet Union Resolution 110/III condemning all forms of propaganda aimed or capable of

creating or enhancing the threat for peace, the disturbance of peace or constituting an act of aggression.

The Declaration of Principles of international cultural cooperation, adopted in 1966 at the XIV Session of the UNESCO General Conference, states that "cultural cooperation should serve the ideas and values which promote the establishment of an atmosphere of friendship and peace". Naturally this cooperation should restrict hostility acts in relations even when expressing opinions. It should contribute to the presentation and dissemination of reliable information. This Resolution suggests the formulation of proposals and the working out of agreements aimed at promoting space communications to the interest of all states. The aim of the Resolution is to adopt measures for studying the problems connected to the use of satellite communications for the dissemination of information, the development of education and a wider cultural and scientific exchange.

Resolution 4301 on "The Dissemination of Information and the Contribution to an International Mutual Understanding" adopted at the XVI Session of the UNESCO General Conference notes the important influence of mass media on social life, underlines that the propagation of war, racism and hatred between nations by means of the mass media is incompatible with the aims and principles of the UN Charter and the UNESCO Charter, that the mass media should play an important role to contribute to international understanding and cooperation to the interest of peace and well-being of humanity.

Resolution 1962/XVIII/ of 1963 of the UN General Assembly concerning the activity of states in the research and use of space and Resolution 2733/XXV/ of 1970, suggest to the states-members and to regional international associations and organizations to extend and promote international cooperation on all levels, with a view that all countries may participate in the creation and exploitation of communication systems which use satellites.

With Resolution 4111 of November 15, 1972 UNESCO adopted a Declaration on the basic principles of using broadcasts through satellites, of the free exchange of information to the aims of development of education and the expansion of cultural exchange. Respecting the sovereignty and equality of states are the basic principles of this Declaration. The document underlines that the use of satellites for the dissemination of information should serve the consolidation of peace, friendship and cooperation among nations, as

well as the economic, social and cultural progress of humanity.

An important step to the further clarification and concretization of legal measures on the use of satellites for the dissemination of information are the decisions of the International Government Conference on TV Broadcasts through Satellites, organized in 1974 in Brussels jointly with UNESCO and the World Organization of Intellectual Property. The Conference adopted a Convention on the spreading of signals carrying broadcasts transferred through satellites. This Convention expanded and enlarged the formulations adopted by UNO, UNESCO and other specialized UN bodies dealing in information and communications. It regulated the questions of peaceful use of satellites, it embodied important decrees for the non interference in internal affairs of states and it also gave directions for the legal regulation of the activities of states in using satellites for broadcasting direct TV programmes.

The XX Session of the UNESCO General Conference held in 1978 with Resolution 4/9.3/2 adopted the Declaration on the Basic Principles concerning the contribution of mass media to the consolidation of peace and international understanding, to promoting human rights, against racism, apartheid and incitement to war. With its clear-cut political character it urges the states-members to adhere to international legal norms in creating favourable conditions for better mass media activities in the spirit of the UNESCO Charter.

Resolution 4/19 adopted at the XXI Session of the UNESCO General Conference held in 1980 states that the final report and the suggestions of the International Commission on the Problems of Communications are an important contribution to the analyses and research on the problems of information and communications. Part II, chapter 1, item 7 "Satellites" of the Final Report of the Commission contains a short analysis on the use of satellites for communications.

Referring to Resolution 4/9.1/3 of the XX Session of the UNESCO General Conference on the establishment of "A new more just world order in the field of information and communications" the XXI Session of the UNESCO General Conference approved the decision of the Intergovernmental Conference for Cooperation in the field of activities. By setting apart additional funds, the Programme aims to support the efforts mainly of the developing countries, by creating communication infrastructures and by a delivery of technical equipment, as well as the preparation of engineering and technical personnel. In resolution 4/21 of XXI session of UNESCO General Conference, it has been expressed the conviction that the gradual realization of the International programme for development of the communications with the participation and the help of the member states of UNESCO, will be an important stage in the process of establishment

a new, more just world order in the field of information and communication.

The Final Act of the European Conference for security and cooperation envisages that the information should serve the high ideals of peace and mutual understanding between peoples, should serve the intellectual perfection of the human individual. On this principal basis the member states of the Conference agreed to cooperate for the wider and free distribution of any kind of information (oral, printing, video, radio and TV ones) serving the aims. It has been noted also, that it is necessary to expand the international cooperation and exchange of information between the mass media authorities, the press agencies, the publishing organizations, the official information agencies of the member states. It has been pointed out the expedience of the expansion of the cooperation between the broadcasting and TV organizations on the way of an exchange of radio and TV programmes by direct broadcast or through recordings, co-production of such programmes and also showing documental films on TV, about the life of the other member states.

In 1972, Soviet Union proposed to be included in the agenda of the XXVII session of the General Assembly of UNO as complex and urgent the problem "of working out an International Convention about the principles, which will guide the states upon the usage of satellites for direct TV broadcasts." The Soviet Union submitted to discussion at the General Assembly a respective draft for a convention as well.

In the draft proposed by the Soviet Union, a particular attention is paid to the fact, that the direct TV broadcasts should be realized exclusively in the interest of peace, progress, development of the mutual understanding and the consolidation of the friendly relations between the states, to improve the educational level of the population, to develop the culture and to assist the process of expansion of the international exchange in the field of science, culture and sport. Upon the realization of the direct TV broadcasts, the states should consider the generally acknowledged principles of the international law, including the UN Charter, the Treaty on the Cosmos from 1967 as well.

This Soviet initiative found a support of the peace-loving and progressive society. Many delegations made statements as in the General Assembly of UNO, so in other agencies of this organization, which supported the basic principles grounded in the proposal and particularly those referred to the mutual respect of the principle of State sovereignty, non-interference in the internal affairs, cooperation, equality and mutual benefit in the realization of these broadcasts. On April 3, 1981 at the session of Juridical Subcommittee, twelve states submitted to discussion at the XXIV session of the Committee for peaceful use of the outer space a new draft of principles,

1.Doc.UN,A/8771,9.VIII.1972

regulating the usage of the satellites from the states for TV broadcasts. A number of attitudes from the proposed in 1972 Soviet draft were grounded in the basis of this draft.

The discussion of the problem for direct TV broadcasts at the XXIV session of the Committee of outer space, as one of the basic problems, included in the agenda raised hard discussions again, reflecting the different approaches of the states' policy. The socialist countries maintained the position, that the submitted draft for discussion should be regarded as a compromise draft, which reflects to a certain extent the interests of all countries concerned, without expressing entirely the interests of either another state or one or another groups of states. Showing a sensible political view and realism, the socialist countries stated that the draft is a basis for an agreement and adoption of the draft-principles.

In contrast to the socialist countries a number of west countries took a strong obstructive and non-constructive position.

The problem for adoption of the draft principles of direct TV broadcasts came into notice again at the carried out in March-April 1982, XXV Jubilee session of the Committee for outer space. Another four states joined to the proposed draft and so it became officially a draft of 16 states.

A number of countries made statement at this session in support of the draft and declared that it is possible now as never before to come to an agreement of the principles for direct TV broadcasts. A hope was expressed that this not very large group of countries whose position did not permit up to now to conclude the working out of principles, will manifest political maturity and constructiveness and will recognize the approach adopted by the prevailing majority of states on that problem.

The position of the People's Republic of Bulgaria on the problem for protecting the interest of the states at the realization of the direct TV broadcasts coincides with the position of the majority of states. We attach great importance to the international and legal consideration of this problem. Our country is well aware of the juridical, practical and the political difficulties, which arise at the realization of direct TV broadcasts, and besides thinks that it is extremely necessary commonly accepted decisions to be founded. The working out of the legal regime for the realization of the direct TV broadcasts lays behind in considerable extent with the technical decision of the problem. The most fruitful way in the exploration and the use of the outer space for peaceful aims is the way of broad international cooperation based on a respect of the interests of all countries. In the basis of the legal regime upon the realization of these broadcasts it should be underlied the commonly accepted principle of respect of the state sovereignty, strict observance of the sovereign rights of the states and

noninterference in their internal affairs.

The direct TV broadcasts should be realized in this way, that they must serve the high aims declared in the UN Charter and to contribute for the development of the mutual understanding and the consolidation of the friendly relations and cooperation between all states and peoples in the interest of the maintenance of the international peace and security. This activity should encourage the distribution of the mutual exchange of information and knowledge in the field of science and culture, to contribute the improvement of the education, social and economic development and the loving standard of all peoples.

To protect people's rights appropriately it is necessary to realize direct TV broadcasts only on the basis of a consent previously given by the State which they are designed for. This question which is a matter of principle and which solution predetermines the conformity with the law or the lawlessness, the lawfulness or the illegality of such activities, might promote or complicate the exchange of cultural values, the respect for each people's contribution to the development of world's cultural treasure and scientific values and in the same time might preserve the originality of national cultures from foreign influence.

On its XXXVI session the UN General Assembly adopted Resolution 37/92 from December 10, 1982, by which it approved the 10 principles on using the Earth satellites by the States for direct international TV broadcasts, suggested by the Committee for peaceful use of outer space.

The first principle already declares that the activities in the field of direct international TV broadcasts should be realized in a way compatible with sovereign rights of States, including the principle of non-interference in internal affairs.

The direct TV broadcasts should be realized by ways and means compatible with the development of mutual understanding and strengthening of friendly relations and cooperation between all States and peoples, in the interest of maintenance of international peace and security. These broadcasts should realize and promote international cooperation. Such a cooperation should be a subject of the corresponding agreements.

A special attention, with regard to the States interests protection is paid to the problems of peaceful settling of disputes. Each international dispute, which might arise out of activities covered by these principles should be settled by means of the established procedures for peaceful settling of disputes in coordination between the parties involved in the disputes and in accordance with the dispositions of the UN Charter. This is the background of the principle on the States' respon-

sibility. States engage themselves to assume international responsibility about the activities in the field of direct TV broadcasts realized by them or under their jurisdiction. In cases when these broadcasts are realized by an international intergovernmental organization, the responsibility should be assumed by this organization as well as by its member-States.

Each receiving or broadcasting State, member of the Offices for direct TV broadcasts, established by the States, should immediately enter into consultations on its activities in the field of direct TV broadcasts with the State asking for such consultations, when requested on the part of any other broadcasting or receiving member-State of these offices.

States should cooperate on bilateral and multilateral basis in the field of protection of copyrights and mixed rights by concluding agreements between the interested States or the legally competent juridical persons under their jurisdiction, without violating the corresponding regulations of international law.

The States planning to establish or to expand the Offices for direct TV broadcasts notify the presumed receiving State or States for such an intention and begin immediately consultations with each of the States which have asked for such consultations. The Office for direct TV broadcasts is established only after the above mentioned conditions have been observed as well as on the basis of agreements and terms according to the corresponding instruments of the International Union for distant communications and in conformity with these principles. As far as the satellite's signal gone beyond the State borders is concerned the instruments of the International Union for distant communications are applied to.

The realization of direct TV broadcasts through satellites makes emerge a number of problems about the State interests protection which are of an internal-legal nature. This concerns mainly the problems of structural and organizational nature defining the activities and the reglamentation of the corresponding organizations, as well as those related to the elaboration of programmes and their broadcasting in the country or abroad.

The establishment of certain organizations or structural sections within the system of State authorities or the modifications and improvements of the existing sections which will have certain functions in broadcasting or in receiving the programmes, can be done only on the basis of internal State legislation which represents a State's prerogative.

It is the State itself which can decide, in the limits of its territory, what programmes to be broadcasted. It is the State itself which is competent to put an accent to one or another kind

of broadcasts, by defining according to the protection of its interests which is the functions realizable through direct TV broadcasts are of utmost importance. This is possible first of all by acts of parliament and upon necessity on the basis of internal administrative acts as well.

Upon the realization of international programmes, a close and international cooperation of mutual benefit is necessary. Precisely with view of protection of the States' interests, receiving programmes from foreign sources, as well as those meant for other States should be done only on the basis of specific international agreements. These agreements, whose nature will be defined from the internal legislation, expressing the interests of the State, will be concluded absolutely on the basis of the international public and private law.

The State has a right to use all existing principles and regulations of the international law, including the international cosmic law, when its territory is irradiated with objectionable broadcasts. In these cases, it has a right to look for compensation about the damages and to ask for secure guarantees of prevention future similar broadcasts.

The complex aspect of the question about the cultural and social regulations, embodied in the national legislations, treats such problems as the fight for disinformation, vilification, the right for secret, misbehaviour, propaganda of violence and cruelty and so on. The decision of these questions upon the realization of direct TV broadcasts may be achieved with the help of such measures, as working out of international aspects of common principles which will guide the States in such activities, concluding bilateral and multilateral agreements, even in the case when it is necessary to exist agreements between the national and multinational TV organizations.