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Direct Broadcast Satellites and National Sovereignty: Can Developing Nations Control Their Airwaves?

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Abstract

This paper attempts to explain that developing nations cannot control DBS (Direct Broadcasting Satellite) airwaves from violating their national sovereignty. They can neither jam them nor outlaw DBS altogether. What they can do is to minimize the spillover and propaganda carried by DBS. They can do this by technical and legal means. However, most of the technical means require developing nations to have their own DBS, either individually or on regional basis. And they might prove too costly for developing countries to use them.

International law would help minimize international propaganda and even spillover. However, developing countries need to rally enough support to pass clearly-defined conventions regulating DBS and a powerful agency to enforce them.

This paper has left out the many opposing points on issues such as right of reply, codes of conduct, prior consent, monitoring and enforcing agency, which have come up in the new world information order debates.

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Transmission en Directe Par Satellite: Les Nations en Voie de Développement Peuvent-elles Contrôler Leurs Ondes?

Résumé

Cet article essaie d'expliquer que les nations en voie de développement ne peuvent pas empêcher la Transmission en Directe par Satellite (TDS) de violer leur souveraineté nationale. Elles ne peuvent pas non plus ni les détourner ni les proscrire. Ce qu'elles peuvent faire est minimiser les débordements et la propagande des TDS. Elles peuvent faire ceci ou par voie légale ou technique. Cependant pour utiliser les moyens techniques, les nations en voie de développement ont besoin d'avoir leurs propres TDS soit individuellement ou au niveau régional. Et l'usage de celles-ci risquerait d'être trop cher pour les pays en voie de développement.

Le Droit international peut en l'occurrence aider à minimiser les débordements voire la propagande internationaux. Néanmoins, les pays en voie de développement ont besoin d'attirer suffisamment de soutien pour édicter des conventions clairement définies susceptibles de contrôler les TDS, et mettre sur pied une agence suffisamment puissante pour les renforcer.

Cet article a cependant négligé quelques vues opposant le principe tels que le droit à la réplique, le consentement mutuel d'avance, les agences de monitoring et de soutien, lesquels points ont été soulevés au cours des débats sur le nouvel ordre mondial de l'information.

When William Shakespeare wrote in his play, *King Lear*, 'as flies to the wanton boys are we to the gods, they kill us for their sports,' little did he know that a time will come when developing nations will be to developed nations what flies and were to wanton boys and gods, respectively.

With the coming of the direct broadcast satellites, developed nations are going to violate national sovereignty of developing countries and the latter will have little power to control the airwaves.

Arthur C. Clarke, way back in 1959, raised the potential threat of DBS to national sovereignty and inability of receiving countries to control their airwaves. 'In a few years of skillful propaganda, the uncommitted nations would be committed. The TV set is mightier than the inter-continental ballistic missile. Inter-continental TV may well be the ultimate weapon ... Any form of censorship, political or otherwise, would be impossible. To jam signals coming from heaven is almost as difficult as blocking the light from the stars.'¹

The ability to broadcast signals from satellites into household receivers has increased the threat of developed nations to the culture and ideology of developing countries and thus the urgent need for new world information order to reverse the one-way flow of international communications from the developed to the developing countries.²

The breath of the debate and its emotional nature show how difficult it is to create any workable international agreement to control the behaviour of nations on issues of substantive differences³, like international communications.

Jamming DBS would be one of the ways developing countries could use to stop the airwaves. 'But jamming would require either another satellite or an extensive terrestrial broadcasting system operating on the same frequencies'.⁴ Neither of these is feasible to developing nations. Jamming has been banned on sound broadcasts. The United Nations and its committees have on three different occasions, all in 1950, condemned jamming as a violation of the accepted principles of freedom of information and as a denial of the right of all persons to be fully informed. International broadcasting is currently governed by the provisions of the 1952 Buenos Aires Telecommunications Convention. Articles 31 and 32 of the convention condemn jamming. Therefore, it is unlikely that jamming signals from DBS will be allowed.

Another possibility would be for the objecting country to attempt interfering with the up-link of the offending country. But this will not only stop the delivering of the signals to the objecting country, but will prevent the sender nation from receiving the signals domestically. And in a regional system, this would prevent all member countries from receiving programmes, not the objecting country alone.

Developing countries, as a block, could fight in international fora to

outlaw DBS altogether. Article 7 of the Radio Regulations of the International Telecommunications Union states that the establishment of broadcasting stations 'on board ships, aircraft or any other floating or airborne objects outside national territories is prohibited'. Although this article was written to eliminate pirate broadcasters in offshore ships and not to apply to communications satellites, developing nations could use it in ITU radio conference to declare that DBS, like pirate broadcasting, is outlawed by article 7. However, outlawing satellite broadcasting altogether would be an extreme remedy.

Therefore, this paper will examine less stringent alternative means of regulating direct broadcast satellites. It will specifically examine technical and legal means which developing countries could employ to mitigate spillover and propaganda. The term 'spillover' describes the straying of signals from one country's satellite beyond their designated geographical target or intended frequency to permit reception by citizens of another country. But if a country purposefully spends extra resources to cause the satellite signals to reach receivers of another country, then it would be propaganda⁵.

One way for the developing countries to control spillover from satellites of the developed nations is to use community receivers, which will almost certainly be under government control. Their antennas could be designed to pick up only those frequencies used by satellite systems approved by the government. If a powerful frequency were identical or close enough to an approved frequency to result in unwanted reception, the government could prevent the operation of community receivers during periods of objectionable programming. Clandestine receivers to pick up unapproved channels will not be likely because they are expensive and the large antennas required would be conspicuous to government observers.

One possible technical way to minimize spillover would be to widely separate the spectrum of the frequencies used by the sending country. But one of the largest obstacles to this means of control is spectrum congestion and the cost of developing higher frequencies. Therefore, developing countries are likely to find this an uneconomical means of minimizing the spillover⁶.

Another technical means would be to manipulate the diameter, direction, power and focus of the satellite signal. However, Thomas (1970) points out that the variability of a satellite's orbit can be another technical factor that may add to the difficulty of minimizing spillover. 'Slight imperfections in the earth's gravitational field plus pull from the sun and moon is carefully launched and placed to prevent broadcast interference in neighbouring countries, the changing attitude of the satellite while in orbit may result in spillover'.

The most promising technical means of minimizing spillover would require the co-operation of both developed nations as the broadcasting nations and the developing countries as the receiving nations. This means involves three steps: (1) polarization of each nation's satellite in opposing directions; (2) spacing the signals so that channels do not overlap and (3) relying on what is known as the FM capture effect.

There are opposite kinds of polarization known as vertical and horizontal polarity. Theoretically, a vertical polarized wave will not induce current in a horizontal antenna, and vice versa. However, in practice, there is some residual interference. A polarized signal requires a special kind of complementary antenna. Without such an antenna, one country would not be able to pick up its neighbour's signal clearly. Therefore, the US and Latin American countries, if they agree to use opposite types of polarity, would minimize their ability to pick up each other's signals. They can also co-operate to space their respective channels so that they do not overlap with the other nation's channel.

The third step involves reliance on the FM capture effect. When two FM stations are next to one another, the FM receivers will capture the stronger signal and exclude the weaker ones. If signals from the US and Latin American countries were oppositely polarized, this would cause the unwanted signals to be sufficiently reduced in power so that only the signals of the desired channels could be captured. In this way, the United States' complementary antenna would capture, let's say, horizontally polarized signals and avoid the vertically polarized signals from Latin America. Once this has occurred, it is unlikely that any of the unwanted signals would be received.

When developing countries have satellites of their own, they can use political pressure and threat of retaliation with spillover to bring developed countries to bargain. Then at that time, both developed and developing countries may find it in their self-interest to begin bargaining efforts in order to prevent receiving spillover themselves. The bargaining efforts might result in codes of conduct among nations with DBS. Codes of conduct are discussed later on in this paper.

The developing nations are more worried by the use of DBS for propaganda than for educational purpose. Educational programmes, such as on agriculture and literacy, would be welcome. But what most worries the developing countries is the use of such a powerful media for propaganda, and, thus, causes what has come to be called 'cultural imperialism'.

There isn't an all embracing definition of propaganda because its scholars have defined it in many different words. However, the American Institute of Propaganda Analysis defined propaganda as 'expression of opinion or action by individual or groups deliberately designed to

influence opinions or actions of other individuals or groups with reference to a pre-determined end⁸. John L. Martin⁹ defines international propaganda as that propaganda 'addressed to people at large or to a regional, national, racial, religious or professional group beyond national boundaries.'

Most of the technological means of controlling spillover are also applicable to propaganda. A government could veto satellite broadcast of objectionable propaganda by cutting off reception by the community receiver. The government could also forbid all home reception by banning the manufacture or importation of home reception antennas or adopters. Alternatively, the government could permit the manufacture or importation of community and home receivers capable of receiving only the government registered and approved channels. Developing countries could also use international law to minimize propaganda through DBS. One way to do that is through the prior consent rule.

The prior consent rule requires prior consent of a country whose boundaries are to be deliberately crossed by a satellite signal. This rule is analogous to the law that states that no foreign airlines may invade another nation's airspace without prior consent. However, when it comes to international mass communications, the law has caused much controversy between developed and developing nations. Richard C. Rowson argues that broadcasts across national frontiers without the consent of recipient country's government do not violate international law if they comply with the United Nations Charter¹⁰.

Article 2(4) of the United Nations Charter states that 'Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the United Nations.'

Rowson supports his argument by citing the Universal Declaration of Human Rights which states in article 19: 'Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions, without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.' Also, the General Conference of UNESCO adopted a resolution in Beirut in 1948 recommending that member states 'recognize the right of citizens to listen freely to broadcasts from other country.'

Whitton and Larson¹¹ interpret article 2(4) of the UN Charter to mean, as long as international propaganda is not 'warmongering, subversive or defamatory' it is not contrary to international law. Martin maintains that the words of article 2(4) should be interpreted to mean that all international propaganda is permissible as long as it does not constitute a 'threat or use of force' by one state against the territorial

integrity or political independence of another and is not an action inconsistent with the purpose of the United Nations¹².

On the other hand, Gerhard von Glahn points out that no clause was supplied as to how the provision of such an instrument (article 19 of Human Right Declaration) would be reconciled with the non-intervention resolution, with its asserted national freedom of choice relative to internal systems or how the treaty is related to the Charter provisions concerning non-intervention in domestic affairs¹³. Glahn contends that since the UN has not defined human rights and freedoms with regard to the control of propaganda regulation would not conflict with legally-established human rights¹⁴. Developing countries can stick to this side of the law and argue their case.

However, experience has proved that attempts at regulation in this area have not been successful. Geoffrey Thomas believes that this is so because the agreements have been 'so general to achieve consensus that they become too general to adequately define the thing to be controlled'. Therefore, developing countries must fight for clearly defined conventions that would present an optimistic outlook for the use of this approach to minimize propaganda by DBS.

Another way of controlling propaganda by DBS is to draft codes of conduct. The purpose of codes of conduct would be to obtain commitments from nations to follow a set of regionally or globally acceptable rules for DBS. These codes may prohibit the use of DBS to violate article 2(4) of the UN Charter and other international treaties aimed at avoiding international misunderstandings. Developing countries could also make use of field strength. Satellite signals would not be legally permitted to cross the borders of the propagating country at more than a specified field strength unless the country into which the signal travelled had given its consent.

A regional agency or ITU could measure the field strength of satellite signals above the acceptable limits. The agency need not inquire into whether the signal was stray or deliberate. Any signal, whether stray or deliberate, should be impermissible if it was too strong and the sender could not show that prior consent had been obtained from the recipient country. ITU has neither enforcement procedures nor facilities for enforcement. It would have to be considerably strengthened in order to administrate the prior consent rule and agreed codes of conduct. Therefore, developing countries must struggle to give ITU enforcing powers so that its authority extends well beyond its current modest concerns with co-ordinating the international technical aspects of broadcasting.

Developing countries could also insist on adoption of the right of reply¹⁵. This remedy would permit the nation attacked by the allegedly

false and distorted propaganda to put its own opinion on the particular subject into the public forum.

There is no direct punishment of the offender, rather the remedy assumes that the governments and news agencies which know that their utterances are subject to a right of reply will be more careful about accuracy. Developing nations could also request the United Nations or ITU or create a new international organization to undertake the task of monitoring satellite broadcasts in order to focus world opinion on broadcasts which recipient nations find offensive and a threat to their security¹⁶.

Without monitoring, the aggressor nation remains unnoticed so that it is easier to attack the authenticity of propaganda, question its source, find fault with the translation or even ignore the protest. But with monitoring, the agency could first bring forward the actual broadcast into evidence and ask the alleged offender to explain the source and nature of the message. Second, the monitoring agency could pressure the offender through worldwide publicity to rectify the message. Finally, monitoring could be used in conjunction with the right of reply to increase the deterrence against nations engaging in objectionable propaganda. Treaties, resolutions, declarations and even the five sources¹⁷ embodied in article 38 of the International Court Statute do not constitute international law, but are useful in controlling international propaganda.

Notes and References

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14. *Ibid* pp 586.
15. For operation of 'Right of Reply' see John B. Whitton, 'The Problem of Curbing International Propaganda, *Law and Contemporary Problems*, summer, 1966, pp. 614.
16. Whitton and Larson, pp. 183-187.
17. The five sources are:
 - (a) International Conventions.
 - (b) International Custom.
 - (c) The general principle of laws recognised by the civilized nations.
 - (d) A subsidiary means for determination of rules of law.
 - (e) Judicial decisions and teachings of the most highly qualified publicists of the various nations.