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# Prior Consent and the United Nations Human Rights Instruments

Walter E. Spiegel\*

Both Article 19 of the Universal Declaration of Human Rights<sup>1</sup> and the International Covenant on Civil and Political Rights<sup>2</sup> endorse the concept of freedom of information as a basic human right. In recent years however, the concept has come under increased scrutiny as the international community has sought to develop a legal framework for the regulation of such new technology as direct broadcast satellites.<sup>3</sup> The debate over the relationship between the rights expressed in the human rights instruments and the regulation of direct satellite broadcasting has largely focused on the issue of "prior consent," that is whether a transmitting state must obtain the consent of another state prior to broadcasting to its territory.

In the recent debates leading to the adoption by the United Nations General Assembly of the "Principles governing the use by States of artificial earth satellites for international direct television broadcasting" (General Assembly Principles),<sup>4</sup> the United States delegate expressed the view that imposing a requirement of prior consent would violate Article 19.<sup>5</sup> Despite support for this view among other Western nations,<sup>6</sup> the Resolution, which includes a prior consent requirement,<sup>7</sup> received strong support from Third World and Eastern bloc nations and passed overwhelmingly.<sup>8</sup> In the view of developing countries, prior consent is necessary to prevent the exacerbation of current inequities in the flow of international communications and thereby to protect the integrity of national cultures.<sup>9</sup> Article 19, by enunciating the rights to seek and to impart, in addition to the right to receive, information is seen as supporting the goal of correcting these inequities through the development of a balanced flow of information.<sup>10</sup>

After reviewing the legal framework of an international right of freedom of information, this article examines United States opposition to prior consent in the context of the human rights provisions. It contends that the United States should not argue that *any* recognition of a right of prior

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consent is inconsistent with Article 19, but rather that international principles recognize a right of prior consent limited to certain types of programming. The article then considers arguments for the Third World position of strict prior consent concluding that, in addition to being inconsistent with the general intent of Article 19, strict prior consent is not the proper response to the inequities in world communications.<sup>11</sup> The General Assembly Principles attempt to reconcile the problems raised by new technology in a world of existing inequities by imposing a requirement of strict prior consent on the use of this technology.<sup>12</sup> This article argues that a better solution would be to define the broad limitations enunciated in the human rights provisions so as to attempt to achieve consensus on those areas of programming considered particularly objectionable.<sup>13</sup>

### INTERNATIONAL RIGHT OF FREEDOM OF INFORMATION

Article 19 of the Universal Declaration of Human Rights, unanimously adopted by the United Nations General Assembly in 1948, declares: "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."<sup>14</sup> The preamble to the Declaration expresses the expectation that the Declaration would be "a common standard of achievement for all peoples and all nations."<sup>15</sup> However, the current legal status of the Declaration is in dispute. In the decades since its adoption, the principles enunciated in the Declaration have been reaffirmed in other international statements and agreements,<sup>16</sup> and invoked in national<sup>17</sup> and international decisions.<sup>18</sup> As a result the Declaration has been recognized by some as an authoritative interpretation of the human rights provisions of the United Nations Charter, and as a codification of customary international law.<sup>19</sup> On the other hand, it has been argued that the principles enunciated in the Declaration are not self-executing and consequently impose no legal obligations on United Nations member states to incorporate them into their legal systems.<sup>20</sup>

The principles of Article 19 of the Universal Declaration are expressed in substantially similar language in Article 19(2) of the Covenant on Civil and Political Rights: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>21</sup> The Civil and Political Covenant was designed, together with the International Covenant on Economic, Social, and Cultural Rights,<sup>22</sup> to set forth in treaty form many of the provisions of the Universal Declaration.<sup>23</sup>

Approved by the General Assembly and opened for signature in 1966, the Covenant is binding on those states that are parties to it.<sup>24</sup> The United States is not a party to either covenant. As international discussion has generally focused on the Universal Declaration, this article will concentrate on that document, although the Covenant will also be mentioned.

Regardless of the precise legal status of these international instruments, the principles enunciated have clearly become a focal point in the debates on direct satellite broadcasting. These principles are expressed in broad, general language and do not explicitly support either those in favor or those opposed to prior consent. Consequently, although designed to be "clear, precise and understandable,"<sup>25</sup> Article 19 is in fact cited in support of both sides of this debate.

### PRIOR CONSENT AND ARTICLE 19

The United States has consistently opposed a regime incorporating a prior consent requirement. In the recent debates in the United Nations Special Political Committee<sup>26</sup> the United States representative, Mr. Lichenstein, stated that, "... any principle requiring that broadcaster[s] must obtain the consent of a foreign Government would violate United States obligations towards both the broadcasters and the intended audience; it would also violate Article 19 of the Universal Declaration of Human Rights, on the right to freedom of expression."<sup>27</sup> In the view of the United States, those adopting the General Assembly Principles were unwilling to consider the issue of prior consent (and the related issue of the international legal responsibility of States regarding the content of broadcasting), "through a non-prejudiced reference to the international law on these matters."<sup>28</sup> United States opposition to prior consent could be based on the belief that it would violate both the right of the broadcaster to "impart" and the right of the audience to "receive" information as expressed in Article 19.

Read alone, Article 19 of the Universal Declaration appears to grant every individual an unrestricted right to receive information across national boundaries. However, Article 19 must be read in conjunction with Article 29 of the Universal Declaration:

In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.<sup>29</sup>

Limitations on the right to receive information are similarly expressed in Article 19(3) of the Covenant on Civil and Political Rights:

The exercise of the rights provided for in paragraph 2 (*supra*, note 4) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>30</sup>

Thus these articles limit any restrictions placed on the right to receive information to those introduced by way of law and necessary for the purposes explicitly listed. Unfortunately, these purposes are articulated in such broad language as to allow states wide discretion in their implementation of restrictions. The greatest latitude for restrictions lies in the allowance of laws necessary for the protection of "public order (*ordre public*)."  
Professor Buergethal explains this concept as follows:

As a legal concept or term of art, the closest English equivalent to "*ordre public*" is "public policy" which means that freedom of information may be subjected to limitations based on considerations of public policy. The public policy of a state is reflected in its political, cultural, educational, social and economic policies. Laws deemed necessary to protect the "*public order*" could consequently encompass legislation prohibiting or restricting radio and television advertisements, requiring the licensing of all or certain communications media, promulgating programming standards, regulating the importation of foreign cultural and information products, and so on.<sup>31</sup>

One would expect a similar divergence in those restrictions deemed necessary by a state to protect the public morals.

Thus the right of the individual to receive information is not absolute.<sup>32</sup> In order for a government to exercise its Article 29 right to limit or restrict programming contrary to morality or to the public order of the state, its *prior consent* to certain types of programming seemingly must first be obtained.<sup>33</sup> However, the state's right to restrict the individual's right to receive and therefore the extent of its ability to demand prior consent, should not be read broadly. Article 30 of the Universal Declaration prohibits a state from enacting legislation aimed at destroying the rights previously set forth.<sup>34</sup> An absolute right of prior consent would allow a government to censor any foreign news or other broadcasting which the government deemed threatening to its position or in any other way objectionable. Consequently, a broad requirement of prior consent could destroy the individual's right to receive "information and ideas through any media and regardless of frontiers" by severely restricting the individual's access to precisely the type of information which Article 19 should pro-

lect.<sup>35</sup> Articles 29 and 30 qualify each other, Article 29 apparently identifying areas of programming in which prior consent could be demanded by a state and Article 30 limiting the scope of the areas.<sup>36</sup>

United States opposition to prior consent could also be based on belief that such a requirement would violate a broadcaster's right to "... impart information and ideas through any media and regardless of frontiers."<sup>37</sup> As with the right to receive information across national borders, Article 19 of the Universal Declaration, read alone, would appear to grant an unrestricted right to impart information. Again, however, this right must be read in conjunction with the limitations on this right expressed in Article 29 of the Universal Declaration and Article 19 of the Civil and Political Covenant. Consequently, a receiving state should be able to argue that the broadcaster's right to impart information is subject to the receiving state's right to insist on prior consent with regard to certain types of programming. Again however, a receiving state should not be able to contend that the broadcaster's rights are subject to an absolute right of prior consent.<sup>38</sup>

#### PRIOR CONSENT AND A BALANCED FLOW OF INFORMATION

In recent years, international attention has increasingly focused on the imbalances in the flow of international communications. Critics, primarily from the Third World, contend that the Western notion of "freedom of information" actually has resulted in a "one-way" flow, a situation which they contend is contrary to the aims of the human rights provisions. According to the MacBride Report,<sup>39</sup>

the critics from the developing world have found by experience that the theory of "free flow" is invalidated by the overwhelming preponderance of information circulated from the small number of industrialized countries into the huge area of the developing world. In order to be really free, information flows have to be two-way, not simply in one direction.<sup>40</sup>

In the view of these critics, progress towards a true free flow is thwarted by overemphasis on the "right to receive" and neglect of the rights "to seek" and "to impart" information:

This unilateral approach has distorted the issues, and in many instances, reduced the whole problem of free flow to defending the media from official restrictions. In reality, such a limitation on the concept means that power centres in the communications world are trespassing on the full rights of the individual.<sup>41</sup>

Whether Article 19 actually endorses a balanced flow of information is not entirely clear. Although the right to "impart" information is granted to "everyone," clearly it is not feasible to grant an unconditional right of access for broadcasting to anyone who so desires. As far as the right to "seek" information, the intent of Article 19 would seem to be to create a right for the individual to acquire information as free from government

obstruction as possible within the confines of the allowable limitations.<sup>42</sup> Discussions on Article 19 of the Civil and Political Covenant indicate that the clause "freedom to seek" was specifically chosen over "freedom to gather" because ". . . it implied the right to active inquiry while "gather" had a connotation of passively accepting news provided by governments or news agencies."<sup>43</sup> Written in 1948, the Universal Declaration does not seem to have been designed to deal specifically with the question of an imbalance in the international flow of communications.

Although Article 19 may not explicitly address imbalances in modern communications, one may nevertheless draw inferences from the provision with regard to the flow of information. A one-way flow of information can be viewed as an obstruction of the individual's right to seek information by limiting his access to a broad range of information and ideas. A balanced flow, on the other hand, strengthens the individual inquiry which the provisions aim to encourage and consequently facilitates the goals of the human rights instruments.

Assuming that Article 19 implicitly endorses a balanced flow of information over a one-way flow, one must nevertheless question whether a prior consent requirement for direct satellite broadcasting is consistent with this objective. If the goal of balanced flow advocates is simply to reduce the flow of information from developed to less-developed countries to the level of information flowing in the opposite direction, a strict prior consent requirement would indeed be an effective means of achieving this result. However, the objective of creating a balanced flow should not be intended to reduce world-wide informational exchange, but rather to encourage the "free dissemination of information and ideas and a broader exchange of views."<sup>44</sup> It is difficult to see how granting receiving nations tight control over incoming broadcasts would achieve this objective.

Prior consent is often justified as a necessary response to the one-way flow of information because of the threat to the cultural integrity of developing countries posed by this imbalance. Direct satellite broadcasting is viewed as potentially exacerbating this threat, on the theory that United States economic and technical superiority would result in domination by American commercial networks absent regulation of direct broadcast satellites.<sup>45</sup> However, it is not clear that the best response to this threat is an absolute right of governmental censorship of all satellite broadcasting. Prior consent implies that the government is best suited to decide what broadcasting poses a threat to local culture, a hypothesis which may not be entirely correct. Absent clear standards, the result could be arbitrary decisions induced more by political than cultural concerns. Broadcasting which clearly poses a threat to valid cultural concerns, such as pornography or racist programming, could be controlled better by the enunciation

of more precise standards for international broadcasting, rather than granting receiving states a blanket right of prior consent.<sup>46</sup>

## CONCLUSION

The international discussions on a legal regime for international direct satellite broadcasting present the difficult problem of defining the scope of Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. This article has argued that the fundamental intent of Article 19 is to remove obstructions to the right of the individual to acquire information and ideas from across national boundaries. While the development of a balanced flow of international communications would strengthen the international dissemination of information and ideas, a legal regime incorporating a requirement of absolute prior consent is inconsistent with the general intent of Article 19 and, for that matter, with the development of a balanced flow of information. The inequities in modern communications should not be solved by the creation of additional obstructions to existing sources of information but rather by positive cooperation among developed and less-developed countries to increase the communications capabilities of the less-developed countries.

Although a requirement of strict prior consent should be resisted, it is clear that the human rights instruments envision a role for state governments with regard to incoming information. As a result, a government necessarily has a right of prior consent with regard to the broadcasting of certain types of programming. Consequently, in any future discussions on direct satellite broadcasting, the international community should seek to define the broad limitations stated generally in the human rights provisions to attempt to achieve consensus on those areas of programming considered particularly objectionable. In this manner, the protection of cultural integrity could be enhanced while the free flow of information would be preserved.

## NOTES

<sup>1</sup> G.A. Res. 217, 3 U.N. G.A.O.R. at 74, U.N. Doc. A/810 (1948) [hereinafter cited as Universal Declaration of Human Rights].

<sup>2</sup> G.A. Res. 2200, 21 U.N. G.A.O.R. Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) [hereinafter cited as Civil and Political Covenant].

<sup>3</sup> Direct broadcast satellites (DBS) transmit signals directly to end users such as home television viewers. When DBS is available intermediate local stations are no longer needed to receive and rebroadcast the signal to the end user. See K. QUEENEY, *DIRECT BROADCAST SATELLITES AND THE UNITED NATIONS* 1 (1978).

<sup>4</sup> Report of the Special Political Committee, Preparation of an International Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting, U.N. Doc. A/37/646 Annex, at 14-16 (1982) [hereinafter Preparation of an International Convention].

<sup>5</sup> See *infra* text accompanying note 27.

<sup>6</sup> See Special Political Committee: Summary Record of the 34th Meeting, 37 U.N. G.A.O.R. (Agenda Item 63), U.N. Doc. A/SPC/37/SR.34, at 11 (1982) (statement by West German delegate: "Consensus would have required that the principles to be adopted were confined to those which already had a basis in international law. That was not the case with the requirement of prior consent, in contrast to the principle of freedom of information across boundaries.") [hereinafter cited as Special Political Committee]; *accord id.* at 5 (Italian delegate noted that "the sponsors attempted to stipulate, through the principle of 'Consultation and agreement between States,' an obligation to enter into non-technical agreements prior to any direct television broadcasting; that did not correspond to any existing provisions of general international law.").

<sup>7</sup> See Preparation of an International Convention, *supra* note 4, at 16. The relevant section, entitled "Consultations and agreements between States, reads as follows:

13. A State which intends to establish or authorize the establishment of an international direct television broadcasting satellite service shall without delay notify the proposed receiving State or States of such intention and shall promptly enter into consultations with any of those States which so requests.

14. An international direct television broadcasting satellite service shall only be established after the conditions set forth in paragraph 13 above have been met and on the basis of agreements and/or arrangements in conformity with the relevant instruments of the International Telecommunication Union and in accordance with these principles.

<sup>8</sup> See Anawalt, *Direct Television Broadcasting and the Quest for Communication Equality*, this volume n.19 (final tally of vote in the General Assembly).

<sup>9</sup> See Special Political Committee, Summary Record of the 34th Meeting, 37 U.N. G.A.O.R. (Agenda Item 63), U.N. Doc. A/SPC/37/SR. 19, at 12 (1982) ("[The Ugandan] delegation attached great importance to the need for an international convention governing the use by States of artificial earth satellites for direct television broadcasting. Such a convention should reflect the aspirations of the developing world, in order to rectify the current imbalances of one-way flow of information. The use of the medium, however, had the inherent danger for developing countries that programmes broadcast through international co-operation might not be compatible with their needs or realities. All activities relating to such broadcast should be based on the principles of consultation and agreement between States."); *accord id.* at 17. ("Cuba considered it essential to arrive at an international agreement on the basis of proposals submitted by States, accompanied by the adoption of extensive national communication policies geared to the educational and cultural sectors as part of a general strategy for independent development. It was also necessary to assert national rights and demand that the so-called free flow of information should be subordinated to the principles of a genuine interdependence involving direct two-way television broadcasting without any discrimination or infringement of national sovereignty and requiring observance of the principle of prior consent by the transmitting States."); *see also* General Assembly, Provisional Verbatim Record, U.S. Doc. A/37/PV.100, at 40 (1982) ("[The Ecuadorean] delegation considers that the principle of prior consultation is essential in the field of broadcasting by satellites because it guarantees the effectiveness and real application of the principle of freedom of information. The fact is that the principle of freedom of information must include the possibility of making choices, which would not exist for a captive audience subject to saturation by programmes transmitted by satellite."); *id.* at 42 ("[Colombia] believe(s) that legal principles should govern

and regulate technological development, particularly in the case of new means of communication based primarily on that technological capacity, because direct television broadcasting by satellite is a new means of communication that implies the greatest danger of the export of culture that could possibly be imagined. There is talk about freedom of information, but those that advocate it forget that such freedom applies not only to the broadcasting but also [to] . . . the reception and the content of the message. . . . Our countries believe that they should be consulted and that their authorization should be requested for broadcasting directed to their peoples.”).

<sup>10</sup> See *infra* text accompanying notes.

<sup>11</sup> The term “strict prior consent” is used in this article to refer to agreements in which the consent of the receiving state must be obtained prior to the direct broadcasting by satellite of any type of programming. Support for this position among Third World nations was demonstrated in the recent vote on the General Assembly Principles. See Anawalt, *supra* note 8.

<sup>12</sup> See *supra* note 7.

<sup>13</sup> See Note, *Toward the Free Flow of Information: Direct Television Broadcasting Via Satellite*, 9 J. INT’L L. & ECON. 514 (1974) (analysis suggesting the development of international content parameters). But see Laskin, *Legal Strategies for Advancing Information Flow*, in CONTROL OF THE DIRECT BROADCAST SATELLITE: VALUES IN CONFLICT, 59, 61 (1974) (“If the United States modifies its position and accepts an international regime under which the consent of the recipient country is required for foreign direct satellite broadcasts, the consequences will be positive.”) [hereinafter cited as VALUES IN CONFLICT].

<sup>14</sup> Universal Declaration of Human Rights, *supra* note 1, at art. 19.

<sup>15</sup> *Id.* at preamble.

<sup>16</sup> See, e.g., Civil and Political Covenant, *supra* note 2; Proclamation of Teheran, 23 U.N. G.A.O.R., U.N. Doc. A/Conf. 32141 (1968); International Convention of the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N. T.S. 195 (entered into force Jan. 4, 1969).

<sup>17</sup> See, e.g., *Filartiga v. Peña Irala*, 630 F.2d 876, 879 (2d Cir. 1980).

<sup>18</sup> See, e.g., *Legal Consequences for States of the Continued Presence of South Africa in Namibia, 1971 I.C.J. 16, 76* (Advisory Opinion—separate opinion of Vice-President Ammoun).

<sup>19</sup> M. McDUGAL, H. LASSWELL & L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 274 (1980); see generally *U.N. Charter* arts. 55 & 56.

<sup>20</sup> See Gross, *Some International Law Aspects of the Freedom of Information and the Right to Communicate*, in NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATIONS, 202 (K. Nordenstreng & H. Schiller eds. 1979); see also *Sei Fujii v. State*, 38 Cal. 2d 718, 242 P.2d 617 (Cal. 1952).

<sup>21</sup> Civil and Political Covenant, *supra* note 2, at art. 19(2).

<sup>22</sup> G.A. Res. 2200, 21 U.N. G.A.O.R. Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966) (hereinafter cited as Economic, Social and Cultural Covenant).

<sup>23</sup> See J. SWEENEY, C. OLIVER & N. LEECH, THE INTERNATIONAL LEGAL SYSTEM 592 (1981).

<sup>24</sup> The Universal Declaration initially had no binding effect on United Nations member states because it was only a General Assembly resolution. R. LILICH & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY 128 (1979). In contrast, the Covenant obligates signatory states to enact legislation so as to give legal effect to the rights set forth. See Civil and Political Covenant, *supra* note 2, at art. 2.

<sup>25</sup> N. ROBINSON, UNIVERSAL DECLARATION OF HUMAN RIGHTS: ITS ORIGINS, SIGNIFICANCE AND INTERPRETATION 33 (1950).

<sup>26</sup> Discussions on the direct satellite broadcasting convention were held in the Special Political Committee. After an affirmative vote on the Principles, the draft resolution was sent to the General Assembly, where it was passed as the Principles governing the use by States of artificial earth satellites for international direct television broadcasting. See *supra* note 4.

27 Special Political Committee, *supra* note 6, at 11. The first clause of Mr. Lichenstein's statement would appear to reflect a belief that a prior consent agreement would violate the First Amendment of the United States Constitution. For an exploration of this issue, see Price, *The First Amendment and Television Broadcasting by Satellite*, 23 U.C.L.A. L. REV. 879, (1976); Note, *Direct Broadcast Satellites and Freedom of Speech*, 4 CALIF. W. INT'L L.J. 374 (1974); Note, *Toward the Free Flow of Information: Direct Television Broadcasting Via Satellite*, 13 J. INT'L L. & ECON. 329 (1979); Comment, *Direct Satellite Broadcasting and the First Amendment*, 15 HARV. INT'L L.J. 514 (1974).

28 *Id.* at 10. The United States position would seem to be that any satellite broadcasting convention must refer to international law. Assuming that the Universal Declaration has developed into a codification of customary international law, see *supra* note 19, an international convention must conform to the rights set forth therein.

29 Universal Declaration of Human Rights, *supra* note 1, at art. 29.

30 Civil and Political Covenant, *supra* note 2, at art. 19(3).

31 Buergenthal, *The Right to Receive Information Across National Boundaries*, in VALUES IN CONFLICT, *supra* note 13, at 73, 78.

32 ROBINSON, *supra* note 25, at 78.

33 See Buergenthal, *supra* note 31, at 80.

34 See Universal Declaration of Human Rights, *supra* note 1, at art. 30 ("Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.")

35 See Buergenthal, *supra* note 31, at 80.

36 Obviously the practical difficulties of permitting a state to require its prior consent to some but not all programming, consistently with Articles 19, 29 and 30, are tremendous. However, as this article is concerned with an articulation of the sources of the United States and Third World positions, the realization of rights guaranteed by the Universal Declaration is, perhaps fortunately, beyond its scope.

37 Universal Declaration, *supra* note 1, at art. 19.

38 See *supra* text accompanying notes 34-36.

39 The International Commission for the Study of Communication Problems, commonly referred to as the MacBride Commission, was set up by the Director General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to review "the problems of communication in contemporary society seen against the background of technological progress and recent developments in international relations with due regard to their complexity and magnitude. INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATIONS PROBLEMS, MANY VOICES, ONE WORLD xiv (1980).

40 *Id.* at 142.

41 *Id.* at 137.

42 See Gross, *supra* note 20, at 201 ("Article 19 [of the Universal Declaration of Human Rights] was not designed to generate information, but merely to ensure its unobstructed flow in accordance with the law of the sending and receiving States.")

43 Report of the Third Committee, Draft International Covenant on Human Rights, U.N. Doc. A/5000, at 5 (1961).

44 Texts Formulated on Draft Principles on DBS, reprinted in QUEENEY, *supra* note 3, at 281.

45 See Laskin & Chayes, *A Brief History of the Issues*, in VALUES IN CONFLICT, *supra* note 13, at 3, 7.

46 The legal framework for a prior consent requirement as a response to cultural threat is also questionable. According to the Universal Declaration, "[e]veryone has the right freely to participate in the cultural life of the community. . . ." Universal Declaration of Human Rights, *supra* note 1, at art. 27. This right is reinforced in the Covenant on Economic, Social and Cultural Rights, which however drops the term "community." The Covenant provides

that States shall "recognize the benefits to be derived from encouragement and development of international contacts and co-operation in the cultural fields." Economic, Social and Cultural Covenant, *supra* note 22, at art. 15. Rather than justifying the isolation of a national cultures, the intent of the Covenant would seem to be to encourage international cultural exchange, which in fact could be facilitated by the development of direct broadcast satellites.

Governmental authority to protect national culture from outside intrusion via direct satellite broadcasting is generally based in the concept of national sovereignty. The essence of national sovereignty is state freedom to manage its own affairs within its own territory, i.e., nations have the right to develop broadcasting systems which reflect their own cultural, political and economic goals. Unregulated direct broadcasting could be viewed as interference with a state's internal affairs and a challenge to domestic jurisdiction.

However, if the legitimate aim of a government is to establish a national broadcasting policy, this is best accomplished by enunciating clear standards, rather than by creating an international agreement with potentially chilling effects on all international exchange. For further information on culture and direct satellite broadcasting, see Pool, *Direct Broadcast Satellites and the Integrity of National Cultures*, in *VALUES IN CONFLICT*, *supra* note 13, at 27.

