

COMMENTS

POLITICS AMONG THE AIRWAVES: AN ANALYSIS OF SOVIET AND WESTERN PERSPECTIVES ON INTERNATIONAL BROADCASTING AND THE RIGHT TO EXCHANGE IDEAS AND INFORMATION REGARDLESS OF FRONTIERS

After all we could get on very happily if aviation, wireless, television and the like advanced no further than at the present.

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I. INTRODUCTION

The Bishop of Ripon may have been able to live quite happily had radio and television technology remained at its 1920's level, but it is most doubtful that contemporary society would share in the cleric's contentment. In reality, it is far more probable that mankind would rejoice in the fact that stagnation has never been the hallmark of science. Radio and television technology, despite the Bishop's wishes, has continuously progressed so that by 1976 there were approximately 953 million radio receivers in the world,² and at least thirty-four countries each had more than one million television receivers.³ Communication technology has become so significant in twentieth century life that as of 1974, two-thirds of the world depends upon radio as the principal news source and mode of contact with the rest of the globe.⁴

In view of these figures, modern broadcasting can be perceived as a technological achievement possessing many positive attributes: it can instantly and simultaneously reach out to millions of listeners scattered

1. Sermon by Edward Arthur Burroughs, Bishop of Ripon, to the British Association for the Advancement of Science, Leeds (Sept. 4, 1927) (*quoted in* J. BARTLETT, *FAMILIAR QUOTATIONS* 776 (1980)).

2. UNESCO, *STATISTICS ON RADIO AND TELEVISION, 1960-1976*, 17 (1978) (Table N).

3. *Id.* at 24 (Table S).

4. D. ABSHIRE, *INTERNATIONAL BROADCASTING: A NEW DIMENSION OF WESTERN DIPLOMACY* 17 (4 *The Washington Papers* No. 35, 1976) (quoting *BRITISH BROADCASTING CORPORATION, BBC HANDBOOK* 267 (1974)).

over vast distances; it can help end the rural isolation of towns and villages too remote to be timely informed by any other mode of communication; it can help foster a stronger sense of global community; and it is essential in expanding the scope of general human knowledge.⁵ Yet, despite all of these benefits, modern communication technology is not without its drawbacks, particularly with regard to communication transmissions between so-called "open" and "closed" societies. This paper will comment upon the Western and Soviet perspectives on broadcast transmissions as evidenced by international politics, human rights, and the internationally recognized right to impart, receive and exchange information regardless of national frontiers.

II. FOCUSING UPON THE PROBLEM: A QUICK OVERVIEW

One cannot regard radio or television broadcasting as being strictly domestic or strictly international.⁶ Depending upon variables such as transmitter power, size, location, and the propagation pattern of its signal, virtually any domestic radio broadcast has the potential to reach an international audience.⁷ Similarly, television signals have the capacity to extend beyond the national boundaries of the originating country and to "spill over" into neighboring nation-states especially when the television signals are being relayed by satellites [See Appendix] rather than terrestrial relay stations.⁸ In addition to the signals themselves, the actual geographic size and location of both the originating and receiving countries are equally responsible for the creation of the spill-over problem. As countries become geographically smaller and closer in proximity to one another (as in central and eastern Europe), there is a greater likelihood of even a weak radio or television signal spilling over into one or more adjoining states. Because these factors have enabled so-called domestic and international broadcasting to overlap each other, from a political standpoint, it no longer matters whether a broadcast originated solely for domestic consumption or whether it was designed to be transmitted into other countries.⁹ Consequently, the crux of the broadcasting dilemma between the West and the Soviet-controlled Eastern bloc is not whether a broadcast was intended for internal or external transmission; the real

5. *Id.* at 10, 18-19.

6. See Robinson, *Regulating International Airwaves: The 1979 WARC*, 21 VA. J. INT'L L. 1, 2 (1980).

7. *Id.* n.3.

8. *Id.*

9. *Id.* at 2.

problem is whether the neighboring state capable of receiving the transmission finds its content to be hostile or counterproductive.¹⁰

Two inherent features of broadcast transmissions help define the scope of the content problem. First, broadcast signals, like bullets or missiles, are incapable of being recalled once they have been transmitted. Second, radio and television signals, unlike printed media, cannot be detained at national boundaries so that their contents may be inspected prior to entering into other states.¹¹ Similar to invited guests, these signals are permitted to enter or are left on the doorstep of a listener's home by the turn of a dial.¹² However, many states are afraid that these transmissions may contain undesirable elements which may harm or disturb the citizenry. Such states seek to protect their citizens from these "international travellers" before they are admitted inside the listener's or viewer's home (for once inside, the government is powerless to protect that person from the content of the broadcast). The traditional method used in trying to protect listeners from such broadcasts is to stop the undesirable broadcasts *en route* by preventing the unwanted portions of the transmission from ever entering the receiving state's airspace.¹³ This police action may be accomplished in one of two ways: (1) either the recipient country can attempt to expunge the undesirable elements of the program by entering into agreements with the originating country whereby the contents of all broadcasts capable of being received are restricted prior to transmission (in other words, pre-broadcast censorship);¹⁴ or (2) the receiving country can attempt to make the uncensored broadcast impossible to comprehend by resorting to jamming techniques such as broadcasting noise or conflicting programs on the same frequency.¹⁵ Regardless of the method undertaken, there remains the issue of the fundamental right to freely exchange ideas and information regardless of national frontiers as is recognized by several international documents. Consequently, any receiving state which acts to restrict or prevent any incoming transmission, either in whole or in part, can be

10. See generally R. LINDAHL, BROADCASTING ACROSS BORDERS 13 (GÖTEBORG STUDIES IN POLITICS No. 8, 1978) (Expressed in other terms, "[t]he international debate has concentrated on the question of what rights a nation (government) has within its own ether territory. Should the ether waves have free access to or free transit through the ether territories of all countries? Or should every country have a right to stop this traffic within its own judicially defined borders?").

11. D. ABSHIRE, *supra* note 4, at 9-10.

12. *Id.* at 10.

13. See R. LINDAHL, *supra* note 10, at 10-14.

14. See *id.*

15. D. ABSHIRE, *supra* note 4, at 47-48. (Though such techniques rarely are completely effective at blocking incoming programs, jamming does serve to deter less committed listeners from attempting to interpret the foreign transmission).

held liable for the violation of these international agreements.¹⁶

III. FINE TUNING: A CRITICAL ANALYSIS OF THE BROADCAST PROBLEM

A. *The Double Standard of Content Evaluation*

Perhaps for simplicity's sake, there is a tendency to regard conflicts between East and West as being strictly a bi-polar confrontation between capitalism and communism.¹⁷ In reality, many more parties are normally involved. This is especially the situation regarding broadcasting between the Eastern bloc and the West, for virtually every state not only has broadcasts which inadvertently spill over into adjoining states, but also has external broadcasting operations whose sole purpose is to beam transmissions into other states.¹⁸ Naturally, when these external broadcasting operations intentionally broadcast news and information into other states, they do so in the language of the receiving state. In fact, foreign language transmissions of news and information have been routine for all the major powers since World War II.¹⁹ Both Western and

16. *But see*, Jonathan & Jacqué *Obligations Assumed by the Helsinki Signatories*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 43, 63-64 (T. Burgerthall ed. 1977) [hereinafter cited as Jonathan & Jacqué] (Besides the Helsinki Final Act, which contains nothing more than a vague allusion to the jamming of radio broadcasts, international law does not directly address or prohibit jamming. Instead, jamming falls under the rubric of frequency regulation. Broadcast frequencies are regulated in order to prevent signals from interfering with one another. Properly registered broadcast signals are afforded the right of protection by the Torremolinos Convention against interference by superfluous or infringing signals. The jamming of a properly registered signal can, therefore, be considered as "a voluntary interference that can be characterized as the transmission of superfluous signals from authorized transmitters." Thus, while jamming is not specifically prohibited by international law, a state can be held accountable for the transmission of superfluous or infringing signals). *See generally* R. LINDAHL, *supra* note 10, at 10 (On December 14, 1950, the members of the United Nations "were reminded that Article 44 of the 1947 International Telecommunications Convention required that all stations should be established and operated in such a manner as not to result in harmful interference with the radio services or communications of other members. Disturbances or jamming of broadcasts were regarded as a violation of the accepted principles of freedom of information and the governments of all member states were recommended by the General Assembly to refrain from such interference . . .").

17. *See generally* R. LINDAHL, *supra* note 10, at 9 ("The radio war . . . was mainly caused by the development of a bi-polar international system . . .").

18. *See* G. WETTIG, BROADCASTING AND DÉTENTE vii-x (1977); D. ABSHIRE, *supra* note 4, at 22. (Among a few of the states which operate external broadcast services are: the United States which operates Voice of America (VOA) for global audiences, Radio Free Europe (RFE) for Eastern-bloc countries excluding the U.S.S.R., Radio Liberty for listeners within the U.S.S.R., and Radio in the American Sector [of Berlin] (RIAS) for listeners within East Germany; Great Britain which operates the BBC for foreign audiences worldwide; West Germany which operates *Deutschlandfunk* for broadcasting into central and eastern Europe and *Deutsche Welle* for transmissions into the U.S.S.R.; the Soviet Union which operates Radio Moscow and Radio Peace and Progress for the benefit of Soviet citizens abroad; and even the Vatican broadcasts programs into eastern Europe).

19. G. WETTIG, *supra* note 18, at viii. *Cf.* R. LINDAHL, *supra* note 10, at 8-10 (During the 1930's as the totalitarian states "began to propagandize their neighbours [sic] . . . the democratic countries began international service in response to the dictators' broadcasts"); D.

Soviet-bloc countries engage extensively in foreign language transmissions with each side broadcasting approximately the same number of hours to the other.²⁰ Despite this apparent parity in total broadcast hours, Western transmissions into Soviet-bloc countries arouse indignation from the governments of the receiving states while "Western governments have never taken offence (sic) over Eastern broadcasting to their countries, even when these broadcasts have constituted violent attacks on Western policies and the Western political order."²¹

While it may seem inconsistent for the Soviet bloc to complain of Western practices which are basically identical to their own, the Soviet bloc is not being hypocritical. Instead, the Soviet bloc countries, in evaluating Western actions, are actually applying a different set of standards than when they are assessing their own broadcasting methods.²² This practice can be explained by the East's need to protect its citizens from outside influences, especially broadcasts originating from outside the Soviet bloc.

All the major powers realize that the primary purpose of international broadcasting is to influence an audience in a certain direction.²³ Consequently, any broadcast, even one that is not expressly political, may be considered a dangerous influence by the Eastern states.²⁴ For example, cultural programs pertaining to the arts or the humanities may

ABSHIRE, *supra* note 4, at 19 (Great Britain began foreign language broadcasts in French, German, Italian, and Arabic in 1938); YAROSHENKO, *Broadcasting in Russia*, in *BROADCASTING AROUND THE WORLD* 52, 73 (W. McCavitt ed. 1981) (The Moscow radio station was broadcasting foreign language programs as early as 1933, and by the end of the decade the Moscow station was regularly airing ten foreign language programs); *See generally* D. ABSHIRE, *supra* note 4, at 21 (United States government overseas broadcasts did not begin until early 1942).

20. G. WETTIG, *supra* note 18, at viii. *See also* D. ABSHIRE, *supra* note 4, at 22 ("In 1976 the Soviet Union's broadcasts to foreign audiences totalled nearly 2,000 hours a week in 84 languages (BBC Handbook, 1976:65), almost equal to the combined hours of VOA, RL, and RFE." However, these 2,000 hours are exclusive of the foreign language broadcasts disseminated by the Warsaw Pact countries and the Western European states). *See also*, R. LINDAHL, *supra* note 10, at 11.

21. G. WETTIG, *supra* note 18, at viii. *See, e.g., id.*, at 16-39 (for various examples of Eastern interference with domestic Western affairs). *See also* D. ABSHIRE, *supra* note 4, at 15 (for additional examples of such acts).

22. G. WETTIG, *supra* note 18, at 40 (As indicative of this dual standard approach, it has been observed that the East considers it legitimate and proper for the German-language services of Radio Moscow and Radio Peace and Progress to attempt to influence and sway West Germans away from the three official political parties in regard to internal matters because the expression of Soviet opinions and commentaries - despite their bias and partiality - does not constitute interference in the domestic affairs of other states. However, when the roles are reversed, the Soviet-bloc wastes no time in accusing the West of interfering in the internal affairs of the Eastern countries). *See generally supra* note 69.

23. R. LINDAHL, *supra* note 10, at 37.

24. *Cf.* G. WETTIG, *supra* note 18, at ix (While Eastern audiences have a large appetite for information of a political nature, there is also quite a demand for Western jazz).

lack any political subject matter *per se*, yet when the programs are directed toward an audience whose own cultural freedom of expression is restricted or suppressed by government policies, these programs assume an implied political significance.²⁵ Even those broadcasts which do nothing more than present a positive image of the broadcaster's homeland can be construed as a dangerous influence. Such broadcasts can instill within the listener a more favorable attitude toward the broadcasting country while simultaneously implanting a seed of distrust or uncertainty about the actions or policies of his own country.²⁶ Thus, from an Eastern perspective it is imperative that a more stringent set of standards be utilized when evaluating Western broadcasts, because such transmissions invariably contain either explicit or implicit political aspects which are perceived by the Soviet bloc as pure propaganda²⁷ and that is something which the Soviet Union considers to be a grave crime against mankind.²⁸

In order to satisfy the Soviet bloc's need to protect its inhabitants from unfamiliar or harmful external influences, screening Western broadcasts is essential.²⁹ Such "fiendish bourgeois propaganda"³⁰ is regarded

25. D. ABSHIRE, *supra* note 4, at 38-39. *See supra* note 24.

26. R. LINDAHL, *supra* note 10, at 38 (Such broadcasts naturally will contain only the most favorable references to the originating country. By emphasizing only good qualities, such as continuous improvement in the standard of living, technical and industrial progress, good social benefits for the citizens, active and successful athletic programs, etc., the broadcaster not only is attempting to improve the listener's knowledge of the originating country, but is trying to train the listener to react positively to future broadcasts and to be more critical of negative comments about the broadcasting country.)

27. *See* D. ABSHIRE, *supra* note 4, at 38-39 (International broadcasting can be labeled as propaganda if the term is broadly defined as communication which tries to influence or affect an audience. But it must be remembered that, unlike Soviet-bloc broadcasts, Western programs are not designed to evoke any "predetermined reaction" but are intended to influence their listeners solely "as communication, not manipulation.").

28. Glos, *The Theory and Practice of Soviet International Law*, 16 INT'L LAW 279, 292-93 (1982) (On March 12, 1951, the Soviet Union enacted the Law on the Defense of Peace which "prohibits war propaganda as the gravest crime against humanity . . ." The prohibition of war propaganda, that is, anything which causes hatred among peoples and deterioration in interstate relations, is derived from the principle of peaceful coexistence and the principle banning aggressive war. Since aggressive war itself is prohibited, then so are any preparations on its behalf. Likewise, the spreading of propaganda is adverse to the state of peaceful coexistence which the Soviets are trying to maintain [*see infra* text accompanying footnotes 53-69]. The Soviets perceive Western broadcasts as a constant violation of the principle prohibiting war propaganda "by imperialist states who [are] conduct[ing] a licentious campaign against the Soviet Union accompanied by an exaggerated war psychosis and extensive war propaganda." When the Soviet claim is analyzed in terms of the its frequent involvement in numerous regions of the world (e.g., Latin America, the Middle East, Afghanistan, the Carriibbean, Vietnam, and Africa) the Soviet argument that the principle banning war propaganda is infringed by the "imperialist" states is incorrect when applied to the West, but is a very fitting "self-indictment" when applied to the U.S.S.R. itself.) *Cf.*, International Covenant on Civil and Political Rights, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) (Article 20 calls for the prohibition by law of any propaganda for war) [hereinafter cited as International Covenant].

29. *See* G. WETTIG, *supra* note 18, at 58.

as a particularly dangerous influence since Western broadcasts into the Soviet bloc provide access to a wider and perhaps different set of facts, interpretations and cultural experiences than is permitted by Eastern information sources.³¹ However, to fully understand why Eastern Europe and the Soviet Union fear the presence of external influences or foreign information, it is necessary to examine the history and philosophical underpinnings of the socialist world.

B. Content Conformity: Soviet Perspective and Problems

From the inception of the Soviet state, communication and its control have been important to the communist leaders.³² In fact, the origins of modern Soviet control over mass communication precede the existence of the Soviet state and extend back to the era of Imperial Russia and Tsarist repression and censorship of those ideas which challenged the rigid authority of their autocracy.³³ Yet the modern Soviet Union is far more severe in its repression of communications than Imperial Russia for the Soviet state exercises total control over its media and it operates radio, television, newspapers, and all other channels of communication like Party monopolies.³⁴

The importance of broadcasting in shaping and spreading ideas to large masses of people is well appreciated in the Soviet Union.³⁵ Even Lenin took note of the speed and efficiency of radio broadcasting³⁶ and referred to radio as "a newspaper without paper . . . and without boundaries."³⁷ In fact, it was Lenin himself who established the world's most powerful broadcasting station in Moscow in 1922.³⁸ But while neither Lenin nor Marx specifically called for the implementation of stringent controls or censorship of communication, the Soviet Union developed history's most pervasive and elaborate system of total control over the

30. *Id.*

31. D. ABSHIRE, *supra* note 4, at 38.

32. *Id.* at 40.

33. *Id.* See also A. GLENN MOWER, JR., *THE UNITED STATES, THE UNITED NATIONS, AND HUMAN RIGHTS* 122 (Studies in Human Rights No. 4, 1979) (describing present-day Soviet policies as "actions which are products of more than one period in a country's total experience . . .").

34. D. ABSHIRE, *supra* note 4, at 40, 42. See also Paust, *International Law and Control of the Media: Terror, Repression and the Alternatives*, 53 *IND. L.J.* 621, 646 (1978) [hereinafter cited as Paust, *Control of the Media*].

35. See YAROSHENKO, *supra* note 19, at 53 (Broadcasting was especially valuable in "enlightening" the illiterate Russian peasantry immediately after the 1917 Revolution). See also G. WETTIG, *supra* note 18, at 4 ("Mass information media" is essentially the main "tool of ideological influence on the masses in every society . . .").

36. YAROSHENKO, *supra* note 19, at 53.

37. D. ABSHIRE, *supra* note 4, at 18. See also R. LINDAHL, *supra* note 10, at 7 (quoting Lenin as describing radio as "an international newspaper").

38. D. ABSHIRE, *supra* note 4, at 18.

flow of internal and external information in order "to define, disseminate, and maintain ideological cohesion and a public, official version of events and issues."³⁹ Essentially, the Soviet state has resorted to censorship so as to maintain and enforce content conformity with respect to the official policy of the Party.⁴⁰ By regularly controlling what information may be relayed to the citizenry, the Soviet government, like the Ministry of Truth in Orwell's post-war vision of the modern world, has attempted to monopolize the truth.⁴¹

Because of the need to consistently conform to the truth as dictated by the Party, the Soviets are especially suspicious of broadcasts originating from outside the Soviet Union. They employ particularly tight controls to make certain "that nothing from abroad will give the Soviet citizen facts or ideas that might conflict with official Soviet versions, or could stimulate questions about orthodox interpretations of the past, the present, and the future."⁴² What the Soviets fear the most from external information is the possibility that foreign ideas may challenge the state and thereby destroy the entire system, for as the spiritual father of the Soviet Union observed: "When people speak of ideas that revolutionize society, they do but express the fact that within the old society the elements of a new one have been created, and that the dissolution of the old ideas keeps even pace with the dissolution of the old conditions of existence."⁴³

Soviet control of the methods of mass communication is but a technique to ensure stability and preserve the *status quo* of the communist world. In the final analysis, the Soviets would rather isolate their citizens from the rest of the world than run the risk of introducing revolutionary ideas from external sources which could serve as the seeds of their own destruction.

Ironically, in the course of its efforts to monopolize the media and all sources of information within the Soviet Union, the Soviet government has encouraged its people to own the very means for accessing foreign-based broadcasts.⁴⁴ Because of the enormous size of the Soviet Union, the communist government utilizes short-wave radio to reach the many millions of citizens who reside in its vast countryside.⁴⁵ Naturally, if the government is broadcasting information to these remote outposts,

39. *Id.* at 40.

40. *Id.* at 42.

41. *Id.* at 53, 77 (Unrestricted communication constitutes a challenge to the Soviet monopoly of the truth.). See generally G. ORWELL, 1984 (1948).

42. D. ABSHIRE, *supra* note 4, at 42.

43. K. MARX & F. ENGELS, COMMUNIST MANIFESTO 91 (S. Moore trans. & J. Katz ed. 1976).

44. See D. ABSHIRE, *supra* note 4, at 45-46.

45. *Id.*

there must be a means of receiving it, so the government has encouraged all citizens to possess a radio, especially short-wave receivers.⁴⁶ However, short-wave radios are capable of receiving other broadcasts besides those of Soviet origin, and this fact poses a substantial problem for Soviet officials. On the one hand, the officials cannot prohibit or impose criminal sanctions upon those who listen to radio because the Soviet government relies too heavily upon this mode of communication for the dissemination of its own information to the more remote reaches of the state.⁴⁷ Conversely, even if it could impose some sort of restriction or sanction, there are so many radio receivers within the Soviet Union that the enforcement of such measures would be impractical.⁴⁸ Even Soviet measures restricting the frequency bands which the radio units can receive have been foiled by the widespread availability of electronics training in youth organizations and schools. This enables many Soviet citizens to modify their receivers to facilitate the reception of foreign broadcasts.⁴⁹

Aware of this dilemma, the Soviet government has attempted to combat the problem posed by the reception of foreign broadcasts in two ways. First, it has attempted to negate any influence which such transmissions may have upon Soviet listeners by discrediting the motives, content, and even the personalities featured in the foreign broadcasts.⁵⁰ Secondly, the Soviet government has sought to raise the standards of domestic programming to make the Soviet produced broadcasts more "competitive" with the non-Soviet transmissions.⁵¹ Despite these attempts to neutralize the effect of external broadcasts, foreign short-wave

46. *Id.*

47. *Id.* at 45-47.

48. *Id.* (As of 1974, there were approximately 57.1 million short-wave radio receivers within the Soviet Union.)

49. *Id.* (Even though Soviet attempts to prevent their citizens from listening to foreign broadcasts have been largely unsuccessful, this failure only indicates the widespread effect of emphasizing science training in the schools. It is estimated that somewhere between 40 to 60 million citizens regularly listen to foreign radio transmissions).

50. *Id.* at 46-47.

51. *Id.* (Allegedly 30-50% of its population regard Soviet broadcasting as inadequate, while 20-30% admit to questioning the credibility and reliability of the information reported in the Soviet broadcasts.). See generally *id.* at 61-62 (While the Party would prefer the media to concentrate upon economic and political matters, polls of Soviet citizens have revealed strong popular interests in other topic areas. In particular, the Soviets have a great craving for news of international affairs and events, and a surprising appetite for "family circle topics," satirical or comical sketches, and reports of crime and accidents. Polls have consistently indicated that the Soviets are least interested in stories concerning "Party themes," economics, and other "official communications." Perhaps it comes as no surprise that the Soviets have the greatest interest in those subjects to which they have the least access.).

transmissions constitute a large breach in the Soviet monopoly of information and communication.⁵²

C. *Broadcasting and the Ideological Struggle*

To properly appreciate the Soviet need to insulate its people from all external sources of information, it is necessary to briefly delve into the underlying philosophy of the Soviet Union. The motivation for the Soviet's attitude toward external information is intrinsically related to the communist foundations of the Soviet state.⁵³ According to Marxist-Leninist philosophy, communism ultimately will prevail over capitalism,⁵⁴ but until the rest of the world follows the Soviet example, communism will have to temporarily coexist with capitalism.⁵⁵ This period of "peaceful coexistence" is to be marked by total cooperation on the part of the socialist states with the capitalist states in all forms of transactions so as to enable the working class of the capitalist world to seize power and convert capitalism into socialism.⁵⁶

However, while peaceful coexistence is to govern all dealings with the capitalist world pending communism's final victory over capitalism, this phrase should not be literally construed. While such peaceful coexistence calls for cooperation in the areas of culture, economics, and politics, this is not to imply that the socialist states will lay idle and permit the world to arrive at communism at its own rate.⁵⁷ To the socialist states, the obligation to carry on the ideological struggle against capitalism is inextricably bound with the policy of peaceful coexistence.⁵⁸

The waging of an ideological struggle during the temporary period of peaceful coexistence is merely an extension of the political and philosophical foundations of Marxist-Leninist thought. Thus "if 'Socialism' . . . were to renounce its offensive against 'Capitalism,' whose total overthrow is the final objective, it would be renouncing its mission to liberate the whole world—in other words, it would cease to be 'Socialism'."⁵⁹

52. *Id.* at 46. *See id.* at 16 ("Only in the area of international broadcasting is the Soviet Union unable to maintain information control.").

53. *See* G. WETTIG, *supra* note 18, 1-3; Glos, *supra* note 28, at 279.

54. *See generally* R. CONQUEST, V.I. LENIN (1972); K. MARX & F. ENGELS, *supra* note 43 (Each text provides a comprehensive guide to the respective philosophies of Lenin and Marx.).

55. Glos, *supra* note 28, at 283.

56. *Id.*; G. WETTIG, *supra* note 18, at 1, 41-42.

57. *See* Glos, *supra* note 28, at 283.

58. G. WETTIG, *supra* note 18, at 1, 3. *See also* Glos, *supra* note 28, at 283 ("Peaceful coexistence is thus a specific type of class war.").

59. G. WETTIG, *supra* note 18, at 2.

Thus, ideological struggle is the only method by which socialism can actively wage its offensive against capitalism during the years of peaceful coexistence.

The ideological struggle essentially consists of extolling the virtues of communism while simultaneously illustrating the inherent flaws of capitalism.⁶⁰ The ultimate goal is to convince people worldwide that the communist way of life is superior to capitalism and to sway them into favoring communism over capitalism.⁶¹ The dissemination of information is crucial in this effort, for only by spreading the proper Party attitudes can the Soviet bloc countries prevail in the ideological struggle.⁶² Consequently, Soviet officials are obsessed with preventing their citizens from receiving unauthorized broadcasts from the West because such broadcasts are likely to cause a decline in the "anti-Western militancy" which the government has been creating via the ideological struggle.⁶³ For the Soviet government, Western broadcasts represent "ideological diversionism" and constitute a challenge to the ideological struggle, for they refute the picture of the class enemy depicted by Soviet programming and thus force Eastern-bloc officials into a defensive posture in order to nullify any effects of such Western propaganda.⁶⁴

From the above discussion, it should be readily apparent that the Eastern-bloc can only permit the dissemination of that information which fosters the ideological struggle and advances the goal of the total destruction of capitalism by communism.⁶⁵ Any other type of information freely received by its people would destroy the very concepts which the Soviets are trying to propagate, since the Soviet mind perceives capitalism and communism as being inherently irreconcilable.⁶⁶ In the ideological struggle, information can only help or hinder the cause. From this perspective, any information disseminated by the East will always be

60. *Id.* at 2-3.

61. *Id.*

62. *Id.* at 3-4.

63. *Id.* at 92. See also Jonathan & Jacqué, *supra* note 16, at 44 ("Western demands for free circulation of information and ideas . . . seemed to the Soviets to be a thinly disguised attempt to introduce a "Trojan horse" that would entice citizens away from socialism by propaganda aimed at the internal transformation of the regime."); G. WETTIG, *supra* note 18, at 57-58 (Western broadcasts are designed to lead the Soviet bloc countries astray rather than "intensifying the democratic process.").

64. See G. WETTIG, *supra* note 18, at 43-44, 92.

65. See generally G. WETTIG, *supra* note 18, at 59 (The East will only permit that information which furthers interstate relations to the mutual advantage of the parties. Western information can only enter the Eastern bloc under these conditions, because such information often contradicts Soviet laws and morals.).

66. Kampelman, *The Helsinki Final Act: Peace Through Diplomacy*, 13 GA. J. INT'L & COMP. L. 327, 331-32 (1983) (Technically, what the Soviets regard as being inherently adverse are the economic systems of the East and the West.).

acceptable and permissible since it is designed to advance Soviet ideology. Conversely, any information broadcast by the West will be regarded as impermissible and unacceptable as it is completely inimical to the ideological struggle.⁶⁷ In light of this line of reasoning, Western broadcasts which are not to the Soviet's liking are branded as acts of interference in the domestic affairs of the Soviet state, while any westward transmissions are regarded by the Soviets as "righteous and justified" even when the broadcasts constitute *bona fide* interference in the domestic affairs of Western states.⁶⁸ Clearly, the Soviets are applying a dual standard in the evaluation of broadcast policies.⁶⁹

IV. CONNECTING THE PROBLEM WITH INTERNATIONAL LAW

A. *Background History of Human Rights*

The vast majority of the problems associated with the free exchange of information between countries can be attributed to the complete lack of any universally accepted standards or laws pertaining to the content of international broadcasts.⁷⁰ Because of the dearth of any regulations directly on point with regard to this issue, states have been compelled to resort to various global instruments pertaining to human rights which only indirectly discuss international broadcasting in the course of discussing the fundamental freedoms of expression and opinion.⁷¹

While far beyond the scope of this paper, the issue of human rights must be discussed in some detail since the fundamental right to impart and receive information regardless of frontiers is an outgrowth of human right development.⁷²

67. G. WETTIG, *supra* note 18, at 40, 43-44, 59.

68. *Id.* at 41-42.

69. See text accompanying footnotes 17-31 & note 22. Cf. Dimitrijević, *The Place of Helsinki on the Long Road to Human Rights*, 13 VAND. J. TRANSNAT'L L. 253, 270 (1980), reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 7, 24 (M. Dominick ed. 1981) (States that prohibit the introduction of certain ideas and information do not necessarily resent them as such or their citizens making use of them, "rather, they react to introduction of these rights in a manner alien to their legal, political, and social setup. It is not always hypocrisy but sometimes sincere belief, when their representatives maintain that those rights already exist and that no change is needed in their municipal laws.").

70. See R. LINDAHL, *supra* note 10, at 10, 39. Cf. Hart, *A Review of WARC-79 and Its Implications for the Development of Satellite Communications Services*, 12 LAW. AM. 442 (1980) (While the various meetings of the World Administrative Radio Conference [WARC] as convened by the International Telecommunications Union [ITU] have approved highly technical regulations regarding the use of the broadcast spectrum, frequency allocation, and access to geostationary orbit, they have yet to address such mundane an issue as the specific contents of international broadcasts.).

71. See R. LINDAHL, *supra* note 10, at 10.

72. See generally Bishop, *Introduction*, 13 VAND. J. TRANSNAT'L L. 249, 251 (1980), reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 1, 3 (M. Dominick ed. 1981) (The present day concept of human rights can be roughly traced through the following international instruments: the United Nations Charter [1945]; the Universal Declaration of Human Rights

The notion that private persons have rights protectable under international law was virtually unheard of prior to World War II.⁷³ However, this attitude changed in 1945 with the signing of the Charter of the United Nations which called for the global respect for human rights.⁷⁴ While the Charter called for the observance of human rights, it failed to enumerate any of these basic rights and freedoms.⁷⁵ This was not done until three years later when the Universal Declaration of Human Rights set forth substantive examples of the fundamental freedoms referred to in Article 55, including the right to freedom of opinion and expression and the accompanying right to exchange information across national frontiers.⁷⁶ The right to exchange information across national boundaries, having been declared a fundamental human right, was later articulated in more binding form when it was included as part of the International Covenant on Civil and Political Rights.⁷⁷ However, the most significant instrument addressing this topic is the Final Act of the Conference on Security and Cooperation in Europe (also known as the Helsinki Accord), which is a synthesis of all of the previous developments in the area

[1948]; the International Covenant on Civil and Political Rights of December 16, 1966, and the International Covenant on Economic, Social and Cultural Rights of December 16, 1966; the Inter-American Convention on Human Rights [1969]; and the Final Act of the Conference on Security and Cooperation in Europe [1975].).

73. *Id.*

74. Bishop, *supra* note 72, at 251. See U.N. CHARTER art. 55 ("[T]he United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."). See generally Paust, *Control of the Media*, *supra* note 34, at 624-25 (for an overview of the policies of the U.N. Charter pertaining to media issues).

75. G. TUNKIN, *THEORY OF INTERNATIONAL LAW* 80 (1974) (Nonetheless, the U.N. Charter "introduced the principle of respect for basic human rights into international law, imposing corresponding obligations on states.").

76. See Universal Declaration of Human Rights, G.A. Res. 217A, art. 19, U.N. Doc. A/810, at 74-75 (1948) ("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."); Paust, *Transnational Freedom of Speech: Legal Aspects of the Helsinki Final Act*, 45 *LAW & CONTEMP. PROBS.* 53, 53-54 (1982) (The Universal Declaration was the first document to expressly recognize a "transnational freedom of speech" regardless of national boundaries.) [hereinafter cited as Paust]. See generally R. LINDAHL, *supra* note 10, at 10 ("On December 14, 1950 the United Nations, by a vote of 49 to 5, emphasized that the freedom to listen to radio broadcasts regardless of the source was embodied in article 19 of the universal declaration of human rights [sic] . . .").

77. See International Covenant, *supra* note 28, at 55 (Article 19 states that everyone has the right to freedom of expression including the right to hold opinions free from interferences as well as the right to freedom of expression including the 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" subject to the proviso that such rights could be restricted as provided by law and as necessary so as to respect the reputations or rights of others or for the protection of public health, order, morals or national security.). See also J. SWEENEY, C. OLIVER & N. LEECH, *CASES AND MATERIALS ON THE INTERNATIONAL LEGAL SYSTEM* (2d ed. 1981) (The Covenant essentially converted most of the provisions set forth in the Universal Declaration into more detailed treaty form.) [hereinafter cited as J. SWEENEY].

of human rights placed in a European context.⁷⁸

B. *The Helsinki Final Act: Content, Purpose, and Legal Role*

The Conference on Security and Cooperation in Europe (CSCE) was held in Helsinki from July of 1973 until August of 1975 and is regarded as "the most important international debate on the recognition of human rights in recent times."⁷⁹ The CSCE is so highly regarded primarily because it enables the countries of Europe plus Canada and the United States to formulate numerous standards pertaining to individual rights, and most significantly, because it has persuaded the Soviet Union into making "several spectacular concessions relating to the treatment of individuals, both their own and foreign, in the Soviet Union."⁸⁰

The Final Act is divided into three separate parts called "Baskets," each dealing with a separate area of cooperation.⁸¹ Basket I is entitled "Declaration on Principles Guiding Relations Between Participating States" and lists ten such exemplary principles.⁸² Basket II is entitled

78. See Conference on Security and Cooperation in Europe: Final Act, Aug 1, 1975, reprinted in 14 INT'L LEGAL MATERIALS 1292 (1975), and in 73 DEP'T ST. BULL. 323 (1975) (The document is formally referred to as the "Final Act of the Conference on Security and Cooperation in Europe," but commonly named the "Helsinki Final Act," or the "Helsinki Accord.") [hereinafter cited as Final Act]; Paust, *supra* note 76, at 53-54; Cassese, *The Helsinki Declaration and Self-Determination*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 82, 105 (T. Buergenthal ed. 1977) (In many respects, the Final Act goes further than merely restating existing principles, but "elaborates and refines" them by adapting them to European conditions.) [hereinafter cited as Cassese, *Self-Determination*]. See also Frowein, *The Interrelationship between the Helsinki Final Act, the International Covenants on Human Rights, and the European Convention on Human Rights*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 71, 72 (T. Buergenthal ed. 1977) (The Guiding Principles refer to other human rights instruments such as the United Nations Charter and the Universal Declaration of Human Rights.). Cf. Kiss & Dominick, *The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act*, 13 VAND. J. TRANSNAT'L L. 293, 306 (1980), reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 47, 60 (M. Dominick ed. 1981) (The Final Act is basically composed of two types of provisions: those which restate the existing norms of international law and those which declare the intent of the signatory states.).

79. Kavass, Granier & Dominick, *Introduction*, in HUMAN RIGHTS, EUROPEAN POLITICS, AND THE HELSINKI ACCORD: THE DOCUMENTARY EVOLUTION OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE 1973-1975, at ix (I. Kavass, J. Granier & M. Dominick eds. 1981) [hereinafter cited as Kavass]. Cf. Paust, *supra* note 76, at 61 ("[T]he more common opinion [is] that the Final Act is an important political document that recognizes, in significant ways, that a human rights law exists and must be effectively guaranteed and implemented according to the UN Charter and the Universal Declaration of Human Rights.").

80. Kavass, *supra* note 79 at ix (As will be discussed later, these concessions have grown into such a substantial bother to the Soviets that they have employed various procedural and political devices in attempts to render the Final Act meaningless.).

81. Bishop, *supra* note 72, at 249. See Final Act, *supra* note 78. See also Buergenthal, *International Human Rights Law and the Helsinki Act: Conclusions*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 3, 3 (T. Buergenthal ed. 1977) (The Final Act "addressed a wide range of topics reflecting the political, military, economic, humanitarian, cultural and educational concerns of the participating states.").

82. Bishop, *supra* note 72, at 249. See Final Act, *supra* note 78, at Basket I (The subjects

“Co-operation in the Fields of Economics, of Science and Technology and of the Environment” and establishes various measures regarding these areas of endeavors.⁸³ Basket III concerns “Co-operation in Humanitarian and Other Fields” and calls for the creation of improved educational and cultural exchanges, better contacts between the peoples of the different participating states, the wider dissemination of information, and the elimination of societal ills.⁸⁴ This third Basket is the most significant to the issue of transnational broadcasting, for while Basket I recognizes the general fundamental freedom to hold opinions, Basket III provides specific guidelines for enabling these opinions to be more freely circulated among the peoples of the signatory states.⁸⁵ Basket III calls for improved access to and circulation of all forms of information (i.e., printed, oral, broadcast and filmed) in order to effect the desired broader dissemination of information and to encourage a wider exchange of information among the participating states.⁸⁶

It is interesting to note that the overall purpose of the Final Act was not human rights issues *per se* but the advancement of the evolution of détente.⁸⁷ Nonetheless, both the West and the East had their own distinct objectives in mind when formulating this instrument.⁸⁸ The West

of several of these fundamental guidelines are worth noting: Principle I concerns sovereign equality and calls for the signatory states to respect the inherent rights appurtenant to sovereignty; Principle III addresses the inviolability of national frontiers; Principle IV calls for the respect of the territorial integrity of the participating states; Principle VI proscribes any direct or indirect intervention in the domestic concerns of participating states; Principle VII requires all signatories to honor human rights and respect the fundamental freedoms [including those of religion, belief, conscience, and thought]; Principle IX asks that all participating states cooperate with one another in accordance with the United Nations Charter; and Principle X calls for the signatory states to fulfill all of their obligations under international law and in good faith.)

83. See Final Act, *supra* note 78, at Basket II; Bishop, *supra* note 72, at 250.

84. Final Act, *supra* note 78, at Basket III; See Bishop, *supra* note 72, at 250.

85. See Final Act, *supra* note 78, at Basket I, Principle VII and Basket III, § 2. *But see* Dimitrijević, *supra* note 69, at 254 (There is a distinction between these two parts of the Final Act in that the Principles enumerated in Basket I are quite general and tend to pertain solely to the condition of human beings within their own respective resident states, whereas the Basket III provisions are quite precise and are more concerned with the state of human relations and contacts between the signatory states.)

86. Final Act, *supra* note 78, at Basket III, § 2 (This section also recommends improving the general working conditions for journalists in and among the signatory states as a means of accomplishing this objective.); R. LINDAHL, *supra* note 10, at 16. See Bishop, *supra* note 72, at 250.

87. Kampelman, *supra* note 66, at 328. See Kiss & Dominick, *supra* note 78, at 313, 315. Cf. J. SWEENEY, *supra* note 77, at 597 (Human rights issues were “also included” in the Final Act.)

88. See R. LINDAHL, *supra* note 10, at 16 (Because of the strong difference in objectives, the Final Act can be perceived as “an East-West compromise.”)

was primarily concerned with seeking improvements in the Soviet's handling of humanitarian issues, especially the liberalization of the movement of ideas, information, and people.⁸⁹ For the Soviets, the utmost priority was given to the universal recognition of the post-World War II *status quo* in Europe; that is, the Soviets sought Western recognition of their hegemony in Eastern Europe by convincing the West to accept the principle of the inviolability of existing frontiers.⁹⁰ Furthermore, the Soviets were seeking to improve their external image in the West by portraying their foreign policy as "cooperative" in allowing Western information and ideas to enter into the communist nations,⁹¹ and they were seeking to improve their internal economic condition by opening the USSR to Western tourists and currencies.⁹²

Ironically, because of the underlying political and moral motivations, the grandly humanitarian provisions of the Final Act are without legal force, for it is universally agreed that while the Helsinki Final Act is drafted in treaty language, it is not a "legal" international treaty, but only a moral and political document which is not technically binding upon the signators.⁹³ The lack of intent to create a legally binding agreement is a key factor that is often given in support of this conclusion, for most of the participating states clearly desired to adopt nothing greater

89. D. ABSHIRE, *supra* note 4, at 12. See also Russell, *The Helsinki Declaration: Brodingnag or Lilliput?*, 70 AM. J. INT'L L. 242, 244 (1976).

90. See Russell, *supra* note 89, at 244, 249; D. ABSHIRE, *supra* note 4, at 12.

91. D. ABSHIRE, *supra* note 4, at 12.

92. G. WETTIG, *supra* note 18, at 10.

93. See D. ABSHIRE, *supra* note 4, at 13; Bishop, *supra* note 72, at 250; Buergenthal, *supra* note 81, at 6; Chalidze, *The Humanitarian Provisions of the Helsinki Accord: A Critique of Their Significance*, 13 VAND. J. TRANSNAT'L L. 429, 449 (1980), reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 187, 207 (M. Dominick ed. 1981); Goldberg, *Human Rights and the Belgrade Meeting*, 13 VAND. J. TRANSNAT'L L. 317, 317 (1980), reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 73, 73 (M. Dominick ed. 1981); Henkin, *Human Rights and "Domestic Jurisdiction"*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 21, 25, 29 (T. Buergenthal ed. 1977); Jonathan & Jacqué, *supra* note 16, at 52-53, 72; Kiss & Dominick, *supra* note 78, at 307 *passim*; Nimetz, *Conference on Security and Cooperation in Europe: Retrospect and Prospect*, 13 VAND. J. TRANSNAT'L L. 323, 325, reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 79, 81 (M. Dominick ed. 1981); Paust, *supra* note 76, at 53 *passim*; Schachter, *The Twilight Existence of Nonbinding International Agreements*, 71 AM. J. INT'L L. 296, 296 (1977); Russell, *supra* note 89, at 248 (The Final Act "is a political statement, negotiated largely by diplomats and not by lawyers, to fulfill political and not legal objectives."). *But cf.* Pechota, *East European Perceptions of the Helsinki Final Act and the Role of Citizen Initiatives*, 13 VAND. J. INT'L L. 467, 493, reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 225, 251 (M. Dominick ed. 1981) (Nonetheless, the United States and other signatories have subsequently referred to the Final Act as if it were a legally binding agreement and have invoked its provisions in various international situations.). See generally Bishop, *supra* note 72, at 251 (The United States' reliance on the Helsinki Final Act can be explained by the fact that it is one of the three human rights agreements which it has ratified.); Dean, *Beyond Helsinki: The Soviet View of Human Rights in International Law*, 21 VA. J. INT'L L. 55, 76 (1980) (The Soviets have ratified virtually all of the international agreements pertaining to human rights.).

than a moral or political commitment⁹⁴ designed to foster East-West relations—an attitude which was very clearly exemplified by President Ford prior to his signing of the Final Act.⁹⁵ Further indices of the legally non-binding nature of the Final Act include: the inability of the Final Act to be registered per Article 102 of the United Nations Charter;⁹⁶ the express statements by the signatories that the document would not affect pre-existing legal rights and obligations;⁹⁷ the lack of any provisions for ratification, entry into force, or duration;⁹⁸ and even its uncommon name.⁹⁹

Generally speaking, legally nonbinding international agreements are typically referred to as “political or moral commitments” and are defined only by their negative implications. Such agreements are without legal effect,¹⁰⁰ are not subject to international law¹⁰¹ and are thereby excluded from the Vienna Convention on the Law of Treaties.¹⁰² Even though an instrument creates only political or moral obligations, signatories are

94. See Paust, *supra* note 76, at 54-55; Kiss & Dominick, *supra* note 78, at 296-300; Russell, *supra* note 89, at 246. See also Schachter, *supra* note 93, at 296-97 (An international agreement is not legally binding unless the signatories intend for it to be, and absent such intent, the agreement is without legal effect.).

95. See 73 U.S. DEP'T ST. BULL. 204-05 (1975) (“I would emphasize that the document I will sign is neither a treaty nor is it legally binding on any participating state. The Helsinki documents involve political and moral commitments aimed at lessening tensions and opening further the lines of communication between the peoples of East and West.”).

96. Final Act, *supra* note 78, at 349 (The text of the Act provides that it “is not eligible for registration under Article 102 of the Charter of the United Nations . . .”); U.N. Charter art. 102, para. 1 (requiring “[e]very treaty and every international agreement entered into by any Member of the United Nations . . . [t]o be registered with the Secretariat . . .”). See Kiss & Dominick, *supra* note 78, at 297 (Since the Act itself states that it is ineligible for registration, it follows that the Act is not a treaty); Bastid, *The Special Significance of the Helsinki Final Act*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 11, 13 (T. Burgerthal ed. 1977); Russell, *supra* note 89, at 247.

97. Bastid, *supra* note 96, at 13.

98. Kiss & Dominick, *supra* note 78, at 297. See generally Schachter, *supra* note 93, at 302 (for the requirements established by United States domestic law for purposes of recognizing a valid “international agreement”).

99. See Russell, *supra* note 89, at 246-47 (In international law, a “Final Act” does not usually constitute a legally binding instrument.); Kiss & Dominick, *supra* note 78, at 297-98 (The use of the term “Final Act” may lead one to assume that the signatories wished to avoid the problem of characterizing the document.).

100. Schachter, *supra* note 93, at 296-97 (International agreements are not legally binding unless the signatories intend for them to be so and absent such intent the agreement is without legal effect.). *But cf. id.* at 298 (Merely because an international agreement contains vague language or is imprecise in establishing binding obligations, care should be exercised before inferring nonbinding intention from the general terminology in agreements which otherwise are perceived as binding. However, it is reasonable to regard vague language and mere statements of purpose as signifying a desire to avoid legal effect where the actual text or circumstances cause the signatories’ intent to appear uncertain.).

101. Schachter, *supra* note 93, at 300 (It is suggested that legally nonbinding agreements are not governed by international law because they fall outside the rule of *pacta sunt servanda.*)

102. *Id.* (Article 2(a) requires international agreements to be within the jurisdiction of international law in order for them to be covered by the Vienna Convention.). See Vienna Convention on the Law of Treaties, art. 2(a), at 289, U.N. Doc. A/CONF. 39/27 (1969).

generally not free to disregard them or to pretend that they do not exist,¹⁰³ for while they may not constitute legally binding duties, political and moral obligations are still obligations — they are not illusory.¹⁰⁴ While noncompliance does not impose sanctions,¹⁰⁵ the failure to comply with political or moral obligations could cause a violating state to lose international prestige and credibility and cause its foreign political relations to deteriorate if it is called to account for itself.¹⁰⁶

In light of these caveats, application of the general rules concerning legally nonbinding international agreements to the Helsinki Final Act puts the Final Act in a unique place among international agreements. To begin with, terming the Final Act as legally nonbinding does not lessen its legal *significance*, for its moral and political emphasis neither diminishes its legal impact nor renders its provisions ephemeral.¹⁰⁷ It is widely recognized that a document which initially lacks legal effect may subsequently acquire such effect if it reflects a legal norm which is already recognized in international law or if it can be used as an aid in interpreting either of the above.¹⁰⁸ This is exactly the situation regarding the Final Act, for while it may be legally nonbinding upon its signatories, it produces legal effects and consequences every bit as significant as those created by legally binding instruments.¹⁰⁹

At the very least, the Final Act's Basket I Principles create an estoppel effect on the participating states; that is, the signatory states are "precluded from challenging the validity of the content given those principles."¹¹⁰ However, the Final Act produces more important legal

103. Schachter, *supra* note 93, at 300.

104. Kiss & Dominick, *supra* note 78, at 300. Cf. Henkin, *supra* note 93, at 30 ("International human rights agreements are like other international agreements, creating legal obligations between the parties and international responsibility for their violation.")

105. Schachter, *supra* note 93, at 300, 303. See also Kiss & Dominick, *supra* note 78, at 300 (The main distinction between instruments creating political or moral obligations and those creating legal duties is that noncompliance with the former does not give rise to a claim for judicially imposed remedies or for the payment of reparations.); Henkin, *supra* note 93, at 33 (The U.N. Charter forbids the unilateral use of force against states found to be in violation of a human rights obligation.)

106. Jonathan & Jacqué, *supra* note 16, at 52-53. *Contra* Henkin, *supra* note 93, at 31, 33 (However, complying states may be hesitant to "incur the political onus" of calling a noncomplying state to account for itself in violating human rights agreements since such violations typically affect only the rights of the citizens of the violating state and have no direct effect upon the other signatories of such agreement. After all, "[s]tates will not lightly risk their relations with another on behalf of the human rights of the latter's inhabitants.")

107. Jonathan & Jacqué, *supra* note 16, at 52-53, 72.

108. Paust, *supra* note 76, at 55, 59-60.

109. Buergenthal, *supra* note 81, at 6; Kiss & Dominick, *supra* note 78, at 307 (While the Final Act is not binding, it produces legal effects "which place it within the scope of international law."). Cf. Paust, *supra* note 76, at 64 (quoting the Amicus Brief for the United States in *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), as stating that "The Final Act, like the U.N. resolutions, does not have the legal effect of a treaty but provides evidence of customary international law.")

110. Cassese, *Self-Determination*, *supra* note 78, at 106-07; Kiss & Dominick, *supra* note

effects than mere estoppel, for the "code of conduct"¹¹¹ it evokes enables the signatories to monitor each other's adherence to the Guiding Principles and to be held accountable for any violations.¹¹² Additionally, while the Final Act itself may lie outside the scope of international law, it evidences accepted rules and norms of customary international law.¹¹³

In summary, while the Final Act constitutes only political or moral commitments, it can be applied in three broad areas. First, it may define the signatories' understandings of their obligations under international law.¹¹⁴ Second, it can serve to remove some subjects (here, human rights) from the exclusive domestic jurisdiction of a given state.¹¹⁵

78, at 300. Cf. Paust, *supra* note 76, at 68 (Estoppel theory does not apply to the legal nature of the Final Act's provisions but presumably prevents the participating states "from denying the moral and political nature of the obligations assumed in the Final Act. [Obligations which] rest on a different set of expectations — those regarding the appropriateness of a partial or total noncompliance or the consequence of noncompliance . . .").

111. Cassese, *Self-Determination*, *supra* note 78, at 106-07.

112. *Id.* at 106. See Buergenthal, *supra* note 81, at 6 (The "Final Act confirms the adherence of the participating states to these principles . . ."). See also *id.* ("[A]lthough a signatory state's failure to comply with these demands does not give rise to a legal claim or legal remedies for nonperformance, the Act legitimates appropriate peaceful political action to obtain performance."); Henkin, *supra* note 93, at 25 (To say that the Final Act "is not legally binding means there are no legal remedies for their [sic] violation; adherence to the Accord is nonetheless an international undertaking and violation of them [sic] is a proper basis for international (nonlegal) recourse and remedy by other participants."); Kiss & Dominick, *supra* note 78, at 300-01 (The signatories have "a special right to speak out concerning implementation" of the provisions of the Final Act); *Id.* at 303 (The Final Act produces legal effects including the "monitoring of the implementation of its provisions by other signatory states, especially in the field of human rights."). Cf. *id.* at 313 (Détente is the ultimate goal of the Final Act, and while it "is not an obligation . . . once a State has agreed to accept it as a goal, the Final Act indicates ways to accomplish it. Any refusal to implement the Helsinki Accord provisions may be regarded as a manifestation of an intent to abandon détente."). See generally Leary, *The Right of the Individual to Know and Act Upon His Rights and Duties: Monitoring Groups and the Helsinki Final Act*, in HUMAN RIGHTS AND THE HELSINKI ACCORD 133 (M. Dominick ed. 1981) (concerning the creation and functions of various monitoring groups as a result of the Helsinki Final Act) [hereinafter cited as Leary, *Monitoring Groups*].

113. Buergenthal, *supra* note 81, at 6; See also Jonathan & Jacqué, *supra* note 16, at 52 (The Final Act does not create new obligations but "either confirms the existence of pre-existing legal obligations, sometimes making them more specific, or it gives rise to moral and political obligations." Additionally, many of the provisions of the Final Act are themselves derivatives of international custom or treaties.); Kiss & Dominick, *supra* note 78, at 307 (The legal effects of the Final Act place it within the jurisdiction of international law.); MOWER, *supra* note 33, at 149 (The Final Act is an "internationally approved standard."); Paust, *supra* note 109, at 53-54 (The Final Act provides evidence of customary international law.); Schnachter, *supra* note 93, at 296 (States have subsequently referred to the Final Act as evidence of international commitments.). Cf. Russell, *supra* note 89, at 248 (Because of its consistency with established international law and the high level at which it was concluded, the Guiding Principles may become "one of the most widely quoted sources of customary international law."). But cf. Tunkin, *supra* note 75, at 214 (The Helsinki Final Act can be compared with U.N. General Assembly resolutions in that both are nonbinding but may exemplify "the concordance of the wills of states regarding the content of a rule of conduct without a concordance of wills regarding recognition of this rule as a norm of international law. Thus, not every concordance of the wills of states leads to the formation of a norm of international law . . .").

114. Frowein, *supra* note 78, at 72.

115. *Id.*

Third, it can be used to interpret pre-existing legally binding instruments.¹¹⁶ As such, the Final Act of the CSCE "falls within a special category of international legal instruments not anticipated by traditional definitions of the sources of international law—that is, non-binding, but directive texts which produce limited legal effects."¹¹⁷

V. APPLICATION OF THE FINAL ACT TO THE PROBLEM OF BROADCAST DISSEMINATION

While the Helsinki Final Act explicitly calls for a broader dissemination of information between countries, implementation of a more open exchange between the West and the Soviet-bloc has advanced relatively little since the Act's finalization in August of 1975.¹¹⁸ This marked lack of progress can be attributed to two primary issues (one political and the other legal): the differing ideological perspectives covering the fundamental origins of human rights;¹¹⁹ and the concept of intervention in the domestic affairs of a sovereign state under international law.

A. *East-West Perspectives on the Origin of Human Rights*

The assertion that a basic human right exists necessarily implies the existence of some granting power which has conferred that right. It is the existence of this conferring entity which causes the East-West divergence concerning the origin of human rights.

The West perceives human rights as pre-existing without any explicit grant, for they are viewed as part of the "natural" or "inherent" rights belonging to man by virtue of his humanity.¹²⁰ Basic rights are

116. *Id. But cf.* Buergenthal, *supra* note 81, at 6 (The Final Act is to be interpreted by referring to the principles of international law.). *See generally* Paust, *supra* note 76, at 59-60 (Despite all of the potential of the Final Act, it has yet to be universally accepted as either an interpretative aid for international treaties or as an evidentiary device for customary international law.).

117. Kiss & Dominick, *supra* note 78, at 314-15.

118. Leary, *The Implementation of the Human Rights Provisions of the Helsinki Final Act - A Preliminary Assessment: 1975-1977*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 111, 140 (T. Buergenthal ed. 1977) [hereinafter cited as Leary, *Preliminary Assessment*].

119. *Id.* *See also* Dean, *supra* note 93, at 57 (which provides a summary of the definition of human rights as stated by leading theoreticians of each camp). *Cf.* Chalidze, *supra* note 93, at 447 (While the Soviets have created obstacles hindering the establishment of a freer exchange of information, "it would be difficult to discuss this problem in reference to concrete provisions of the Helsinki Accord.").

120. Dean, *supra* note 93, at 59 (According to Enlightenment philosopher John Locke, certain rights belong to man based solely upon his humanity rather than from any grant of law or society.).

regarded as innate possessions of the individual which may be freely asserted against the state for the individual's own advantage.¹²¹ Consequently, the West considers the fundamental freedom to impart and receive information as an inherent right of mankind and believes that no state may interfere except in very limited and defined circumstances.¹²² Furthermore, in order for this right to be *fully* exercised, information and ideas must be free to travel across national boundaries,¹²³ for unrestricted circulation of ideas is essential to any true "understanding among peoples . . . irrespective of their political, economic and social systems."¹²⁴ This true understanding among peoples can be enhanced by a multiplicity of viewpoints and opinions on any given topic because only such an open-door policy regarding the exchange of ideas and information can help to alleviate the dangers associated with subjective information and propaganda.¹²⁵

The Soviets do not recognize any form of prelegal rights,¹²⁶ but regard the state as the sole source of all rights.¹²⁷ The Soviet theory is based upon the Marxist-Leninist concept that law is not pre-existing but is the fruit of the prevailing economic system.¹²⁸ Accordingly, the Soviets focus on the collective and economic rights of man¹²⁹ rather than his individual rights, for only the former can grant and provide a context for the latter.¹³⁰ Since the state is the grantor of all rights, it has reserved for itself the dissemination of information and, as such, it remains an area under total state control.¹³¹ Since the Soviets regard the dissemination of information as a state responsibility, only information which fosters their

121. *Id.* at 62.

122. Leary, *Preliminary Assessment*, *supra* note 118, at 140-41.

123. *See id.* at 140.

124. Jonathan & Jacqué, *supra* note 16, at 44.

125. *See Leary, Preliminary Assessment*, *supra* note 118, at 140.

126. Dean, *supra* note 93, at 92 (From the Soviet perspective, "rights do not exist in presocial form.").

127. *Id.* at 64 ("[T]he Soviets believe that the source of human rights is the state . . ."). *See also* Jonathan & Jacqué, *supra* note 16, at 43 (Socialism considers individual freedom "to be interrelated with the individual's duties to the state and the community.").

128. Dean, *supra* note 93, at 58, 60 ("Because the forces of production define the relationship between the individual and the State in society, human rights derive their content and nature from those forces and class relationships.").

129. *See* Dean, *supra* note 93, at 71 (The Soviets have adamantly emphasized the social and economic aspects of human rights. In fact, their position was responsible for the inclusion in the Universal Declaration of Human Rights those principles recognizing and "guaranteeing the right to work, the right to protection against unemployment, the right to social security, and the right to an adequate standard of living, including food, clothing, housing, and medical care.").

130. *Id.* at 60 (According to Soviet ideology, individual rights are derived from economic rights.); *Id.* at 92 (The Soviets emphasize collective rights since the State grants rights and it is the Party which subsequently defines their content.)

131. Leary, *Preliminary Assessment*, *supra* note 118, at 141.

ideology can be tolerated.¹³² Consequently, in the Soviet bloc, the freedom to receive and impart ideas and information assumes a highly subjective guise and becomes the freedom to hold correct opinions and the freedom to exchange state approved information.¹³³ Put in other terms, within the Soviet Union, "people have the basic right to agree with the government."¹³⁴

The issue of the fundamental source of human rights is clearly more of a political difference of opinion between two opposing economic philosophies than a legal issue capable of judicial resolution.¹³⁵ Unfortunately, this political conundrum has significantly retarded the progress of information dissemination because the Western and Eastern concepts of human rights differ so dramatically.¹³⁶ Even though the Soviets agreed at Helsinki to broaden the freedom of the exchange of ideas and information regardless of national frontiers, it has become evident through subsequent Soviet violations of the Final Act that their view of the Act is radically different from that envisioned by the West.¹³⁷ One writer has summarized the vast gulf between the West's expectations and the subsequent realities of the Final Act as if the two sides were either "speaking a different language or using the same words to speak of different realities."¹³⁸

Perhaps the concept of differing realities is not too far from the truth regarding East-West relations in the field of human rights and the freedom to exchange information across national boundaries. After all, both East and West have their own economic and political systems, so why should it be any different for both to have their own concepts of human rights? Just as the West's view of human rights is shaped by the Western

132. *Id.* (Similarly, any idea or information which is deleterious to the State, its peoples, or its goals, must be prohibited.). Cf. Jonathan & Jacqué, *supra* note 16, at 43-44 (Since individual liberty is subordinate to the State's general interests per Soviet ideology, broadcasts and reports containing views and opinions not in accord with official Party policy are inadmissible since journalists are obliged to further the State's goals.). See generally D. ABSHIRE, *supra* note 4, at 15 ("[T]he Soviet Union . . . intends to maintain barriers against any information and ideas contrary to the official line.").

133. See Paust, *supra* note 34, at 648-49 (Since the aim of the Socialist state is to obtain content conformity, all forms of media are under direct control of the state. Under such a system, "[f]reedom of speech means freedom of correct speech . . .").

134. Feldbrugge, *The Soviet Human Rights Doctrine in the Crossfire Between Dissidents at Home and Critics Abroad*, 13 Vand. J. Transnat'l L. 451, 466, reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 209, 224 (M. Dominick ed. 1981).

135. Dean, *supra* note 93, at 56.

136. *Id.* at 57. See also Dimitrijević, *supra* note 69, at 259 (Contemporary analyses of human rights are subjectively structured into an "either-or" dichotomy so that human rights are perceived as being either "capitalist rights" [i.e., political or civil rights] or as being "socialist rights" [i.e., economic, cultural, or social rights].)

137. Kampelman, *supra* note 66, at 330. See *infra* p. 267-68.

138. Leary, *Preliminary Assessment*, *supra* note 118, at 141.

theory of natural rights,¹³⁹ it is perfectly logical to assume that the Soviet concept of human rights would be deeply rooted in socialist legal and economic theory.¹⁴⁰ Thus, when the two sides disagree regarding the implementation or interpretation of human rights, neither side is necessarily acting arbitrarily by refusing to comply with the other side's vision of human rights; each side is only acting in accordance with its own respective political and legal theories.¹⁴¹

Unfortunately, the existence of different political philosophies was a point overlooked at Helsinki. The West may have been naive in expecting the Soviets to suddenly abandon their Marxist-Leninist roots in favor of allowing Western "ideological pollution" to freely circulate among the citizenry for the alleged purpose of improving East-West relations.¹⁴² As a result of this oversight, one can argue that the West was short-changed at Helsinki; for while the West granted recognition of Soviet hegemony in Eastern Europe, all that it got in return was the Soviet's own particular interpretation of human rights and international law.¹⁴³

However, it would probably be more accurate to state that the West only broke even at Helsinki. While much of what the West received has been mere Soviet lip service, the West also obtained the Soviet's signature on the bottom line of the entire Final Act, and this has proven to be a real Achille's heel for the Soviets.

The Helsinki Final Act has become one of the Soviet-bloc's favorite international documents since it gave them the long sought-after recognition of their hegemony in Eastern Europe.¹⁴⁴ But the existence of the Western-inspired human rights provisions in the Final Act has posed a real diplomatic problem for the Soviets.¹⁴⁵ On the one hand, they cannot refute the entire Final Act in order to escape from its human rights provisions, for doing so would wipe out their prized *de jure* recognition of their hegemony in Eastern Europe.¹⁴⁶ On the other hand, their hesitancy in complying with the human rights provisions has been a continual source of embarrassment for the entire Eastern-bloc.¹⁴⁷ As a result of

139. See *infra* p. 272-73.

140. See *infra* p. 273.

141. See Dean, *supra* note 93, at 57.

142. Jonathan & Jacqué, *supra* note 16, at 49-50 (After all, it is paradoxical for a country waging a violent ideological struggle against the West and all that it stands for to simultaneously seek a goal of détente.)

143. See Dean, *supra* note 93, at 76-77; D. ABSHIRE, *supra* note 4, at 14, 76 (While the Soviet representatives at Helsinki appeared to make concessions regarding the free flow of people, ideas, and information, the government wasted no time in applying its own interpretations of these commitments.)

144. Russell, *supra* note 89, at 272.

145. *Id.*

146. See *id.*

147. See *id.*

their politically unpleasant predicament, the Soviets have formulated a compromise position in regards to the Final Act by attempting to differentiate between the three Baskets.¹⁴⁸ Essentially, the Soviets have distinguished the Basket I Declaration of Principles (which contains the provisions of most significance to the recognition of Soviet hegemony) as being legally binding upon all signatories, while they have labelled the Basket III human rights provisions as being merely "recommendatory or programmatic."¹⁴⁹ Nonetheless, these efforts on the part of the Soviets do not "preclude the inference that the Soviets recognize that the Helsinki Act contains legal obligations pertaining to human rights."¹⁵⁰ The Soviet Union's political attempts at avoiding its duties under the Final Act have only further delayed the implementation of the human rights provisions (including the freedom to exchange information regardless of national frontiers) which all parties agreed to honor by signing the Final Act. In short, the Soviets have been buying time, and inevitably they will have to either implement the provisions or reject the Final Act *in toto*.

B. *Intervention in Domestic Affairs*

The second major obstacle to the establishment of a more open exchange of ideas and information between East and West is the Soviet's traditional defenses of non-intervention in its domestic affairs and respect for its national sovereignty. Both of these defenses are commonly raised in response to Western accusations of Soviet violations of human rights provisions (particularly the treatment of Soviet dissidents) and in justifying their keeping out unwanted Western broadcasts.¹⁵¹

1. Broadcasts as Intervention

The Soviets regard the transmission of programs between states to be an act of intervention in the receiving state's internal affairs and a breach of its national sovereignty when the receiver-state has not expressed its prior consent to the transmission's content.¹⁵² The Eastern-bloc has taken a hard-line stand in asserting that national security and

148. See Paust, *Control of the Media*, *supra* note 34, at 58; Pechota, *supra* note 93, at 493.

149. Pechota, *supra* note 93, at 493.

150. Paust, *Control of the Media*, *supra* note 34, at 58.

151. See Dean, *supra* note 93, at 87; Glos, *supra* note 28, at 299-300. See also Leary, *Preliminary Assessment*, *supra* note 118, at 142 (Voice of America [VOA] coverage of human rights and dissident activities within the Eastern-bloc has particularly irked the Eastern leadership which has construed such coverage as both "an ideological attack on the Soviet system [and] interference in their internal affairs . . ."). See generally Freymond, *Human Rights and Foreign Policy*, in HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION 71 (B. Ramcharan ed. 1979) ("The governments of states, even the most democratic and liberal, are highly sensitive to any foreign interference in their internal affairs.").

152. G. WETTIG, *supra* note 18, at 68.

the need to protect its citizenry confers upon each state the exclusive right to control or censor all information from abroad before it reaches the state's inhabitants.¹⁵³ Through this argument, the Soviets are voicing concern over the imposition of a foreign culture upon a domestic lifestyle and the resultant conflicts between the two cultures.¹⁵⁴

To an extent, the Soviet argument makes sense; after all, every state possesses its own unique customs, values, principles, and traditions, upon which it will rely when formulating the subjective criteria for evaluating the types of ideas and information which it will allow to be disseminated among its people.¹⁵⁵ Since it would not be uncommon for the subjective standards of the receiving state to vastly differ from those of the broadcasting state,¹⁵⁶ the imposition of the broadcasting state's culture upon the receiving state could be interpreted as a violation of the receiving state's sovereignty and as interference with that state's domestic affairs.¹⁵⁷

External information or ideas could produce severe consequences for a developing or insulated state, including: the destruction of national or cultural identity;¹⁵⁸ the weakening of cultural values, folkways, and historic traditions;¹⁵⁹ the alteration of traditional attitudes;¹⁶⁰ and the "increased homogeneity of [the] national population."¹⁶¹ By exercising strict control over all information from abroad, the Soviets are attempting to avoid these potential problems associated with transnational broadcasting.¹⁶²

153. *See id.* at 14. *See also id.* at 58 (The Soviet attitude is that any exchange of information must be considered in light of national sovereignty. This was clearly expressed by Soviet Foreign Minister Andrei Gromyko when he stated that the primary requirement in any exchange of information is "the need to protect state sovereignty from every form of external interference." Additionally, Gromyko said that the right of a sovereign to regulate the flow of information into its borders is in total compliance "with the generally accepted norms of national sovereignty and the right of every state to decide independently all questions regarding its own internal affairs."). *But see* R. LINDAHL, *supra* note 10, at 15 (It is curious to note that the Soviet stance concerning what types of external information comprises interference with its domestic affairs is quite irreconcilable with the position it assumes when deciding what type of contents it has the right to transmit to the citizens of other states.).

154. *See* R. LINDAHL, *supra* note 10, at 14.

155. *Id.*

156. *Id.* at 14-15.

157. *Id.*

158. Guback & Varis, *Transnational Communication & Cultural Industries*, in UNESCO REPORTS AND PAPERS ON MASS COMMUNICATIONS No. 92, at 49 (1982); D. ABSHIRE, *supra* note 4, at 67.

159. D. ABSHIRE, *supra* note 4, at 67.

160. *Id.* at 18.

161. R. PAXTON, *EUROPE IN THE TWENTIETH CENTURY* 290 (1975).

162. *See generally* D. ABSHIRE, *supra* note 4, at 19 (After all, international broadcasting effectively limits a state's ability to shield or insulate its population, but ideological conformity and cultural insulation are two key goals for the Soviets.); R. PAXTON, *supra* note 161, at 290 (While international broadcasting is a tool for spreading mass culture, the Soviets wish to prevent international taste and fashion from overtly influencing Soviet culture.).

While the West perceives the broad dissemination of uncensored ideas and information to be essential in achieving a true understanding among the peoples of the world,¹⁶³ the Soviets regard uncontrolled or uncensored international broadcasting as a serious threat to national culture. Consequently, they resort to the argument of international intervention in internal affairs as a means for simultaneously warding off "cultural imperialism" and for preserving a sense of national identity.

2. Western Accusations of Human Rights Violations as Intervention

The Eastern-bloc has also raised defenses in response to Western accusations of Soviet violations of human rights provisions under international law.¹⁶⁴ Because these defenses relate to legal rather than political issues, it is worth exploring the socialist concept of law itself in order to fully understand the scope of these defenses when applied to international agreements.

In the socialist world, law assumes a different meaning than it does in the West.¹⁶⁵ Like all elements of socialist society, the Soviet concept of law is deeply rooted in Marxist-Leninist thought.¹⁶⁶ It is dictated by the Communist Party, the vanguard of the proletariat class of the socialist state.¹⁶⁷ This vanguard or *de facto* "ruling class" utilizes law as "an instrument of state policy" in order to direct all facets of society.¹⁶⁸ Law thus becomes a system of state-imposed norms designed to uphold the political order and to foster communist society.¹⁶⁹ Unlike Western law which is concerned with individual *rights* which may be asserted against the state, socialist law emphasizes the citizen's *duties* to society at large and the state as a whole.¹⁷⁰ Because of this ideological perspective, the socialist world can accept and be bound by only those norms or laws which are in harmony with Marxist-Leninist thought.¹⁷¹

Consequently, when placed in an international setting, socialist states do not feel bound by Western imposed laws since Western legal

163. *See supra* text accompanying note 124.

164. *See supra* note 151.

165. *See* Glos, *supra* note 28, at 279.

166. *Id.* at 280; Dean, *supra* note 93, at 57.

167. Glos, *supra* note 28, at 280.

168. *Id.*

169. *Id.* at 279.

170. *Id.* (emphasis added).

171. *Id.* at 283.

theory is so completely alien to the socialist legal concept.¹⁷² Furthermore, because the socialist states regard international law as an outgrowth of domestic law,¹⁷³ they do not alter their own conduct when implementing international agreements in order to meet the standards called for in the agreements. Instead, socialist states make the instrument itself conform with the existing social, political, and economic norms of their state. In short, they attempt to define international agreements in terms of domestic law.¹⁷⁴ It is from this legal perspective that the Soviet view regarding the implementation of human rights provisions is derived.

While Soviet legal experts consider the socialist states to be bound by the provisions of international human rights instruments, their analysis of these instruments suggests that actual agreement between East and West may not exist.¹⁷⁵ This is primarily attributable to the Soviet's steadfast belief that human rights are the product of each state's economic system and that such rights are exclusively within each state's domestic jurisdiction.¹⁷⁶ The Soviets believe that international conventions merely create obligations on the part of states to grant human rights to its citizens and do not confer such rights upon the citizens of a state directly. Thus, the Soviets contend that the principal battlefield for human rights is the domestic homefront of each state and not the international arena.¹⁷⁷ By emphasizing the domestic character of the human rights issue, international legal devices — though regarded as important by the Soviets — are nonetheless given a secondary role in the efforts for securing human rights.¹⁷⁸ Consequently, the proliferation of human

172. *Id.* Dean, *supra* note 93, at 79-80 ("Soviet legal scholars conceive of international law as a struggle between so-called progressive Socialist nations and reactionary bourgeois nations." They perceive the underlying ideologies of the two nations as being "irreconcilable" and that the ideological struggle precludes any form of agreement or compromise between the two systems).

173. *See* Dean, *supra* note 93, at 70-71.

174. *Id.* at 76-77. *Cf.* Glos, *supra* note 28, at 294 ("International law is used by the Soviets as an instrument to achieve their nefarious ends. Their so-called struggle for peace . . . has for its objective the weakening of the Free World's resolve to resist communist aggression. To that end they make efforts to enmesh the Western powers in treaties, agreements, and declarations which impose obligations on them to their detriment, while the Soviets have not the slightest intention of keeping their part of the bargain.").

175. Dean, *supra* note 93, at 79-80.

176. TUNKIN, *supra* note 75, at 82-83; Paust, *Control of the Media*, *supra* note 34, at 649-50. *See also* TUNKIN, *supra* note 75, at 65 (The Soviets believe that human rights are within their exclusive domestic jurisdiction as a result of the Principle of Self-determination as set forth in the Charter of the United Nations.). *But cf.* Dean, *supra* note 93, at 77-78 ("From a Western perspective, human rights matters now occupy a middle ground between issues of pure international law and issues solely within the domestic jurisdiction of states.").

177. TUNKIN, *supra* note 75, at 82-83 (The municipal legal system of each state and its socioeconomic system, in particular, are the primary means of implementing human rights).

178. *Id.* at 83. *See generally, id.* at 81 (In light of the Soviet legal system's emphasis upon

rights conventions under international law has been construed by the Soviets as constant intrusion into their domestic affairs.¹⁷⁹ Even though such "encroachments" have persisted, the Soviets have made it clear that, to them, human rights have neither become matters directly governed by international law nor have they ceased being matters essentially within a state's domestic affairs.¹⁸⁰

3. Flaws in the Soviet's Arguments

Despite their complaints about interference in their internal affairs, the Soviet explanation of their human rights position is untenable.¹⁸¹ Their argument is untenable because it lacks credibility. The Soviet approach represents desperate efforts to change the rules of accepted international law in order to avoid the human rights provisions agreed to at Helsinki.¹⁸² By alleging that the treatment of its own citizens is a matter exclusively within its domestic jurisdiction and that the monitoring efforts and the criticism by other signatories to the Act constitute instances

duties, international law is used to define a state's duties in guaranteeing the principle of respect for human rights. According to the Soviets, this principle can be summarized as: "(a) all states have a duty to respect the fundamental rights and freedoms of all persons within their territories; (b) states have a duty not to allow discrimination by reason of sex, race, language, or religion; (c) states have a duty to promote universal respect for human rights and fundamental freedoms and to cooperate with one another in achieving this objective.")

179. *Id.* at 82.

180. *Id.* See also Dean, *supra* note 93, at 87 quoting *Pravda*, June 11, 1977, at 5, translated in 29 Current Dig. Soviet Press, July 6, 1977, at 5. (The Soviets are adamant about the role of outside forces seeking to meddle with its own domestic affairs for it "will not allow anyone to assume the pose of mentor and teach it how to handle its internal affairs.")

181. See Feldbrugge, *supra* note 134, at 466 (While complaints about interference in domestic affairs may be "procedurally adequate," they are not at all persuasive in terms of the topic). Compare Dean, *supra* note 93, at 90 (*Pravda* has stated that the human rights provisions of the Final Act must be interpreted in light of the other Basket I Guiding Principles especially Principle I concerning Respect for the Rights Inherent in Sovereignty and Principle VI calling for Non-Intervention in Internal Affairs) with Cassese, *The Approach of the Helsinki Declaration to Human Rights*, 13 Vand. J. Transnat'l L. 275, 288-89 reprinted in HUMAN RIGHTS AND THE HELSINKI ACCORD 29, 42-43 (M. Dominick ed. 1981) (Claims that states should be prevented from raising allegations of human rights violations because of Principles I and VI must be rejected for two reasons. First, the duty of states established under Principle I [i.e., to "respect each other's right freely to choose and develop its political, social, economic, and cultural systems as well as its right to determine its laws and regulations"] is not infringed by one signatory accusing another signatory of non-compliance. Second, Principle VI is "designed to forbid armed or coercive intervention only. Accordingly, whenever a state merely alleges that another state does not abide by the human rights principles . . . such a *démarche* is not within the purview of the prohibitions established by the Principle.") [hereinafter cited as Cassese, *Approach*] and Dimitrijevic, *supra* note 69, at 270 (Principle VI is not violated by voicing concern since concern is merely an expression of approval or disapproval and not an act of participation in the domestic politics of another state). *But cf. id.* (However, because human rights are so closely related to the internal political and social systems of a state, "any appeal for the promotion and respect of human rights in a given country may be meant, interpreted, or perceived as an attempt to undermine the political and social structure.")

182. See Feldbrugge, *supra* note 134, at 466 ("The Soviet Union joined the human rights game a long time ago. If it wants to continue to play, it must eventually realize that it cannot change the rules it does not like.")

of unlawful intervention in internal matters,¹⁸³ the Soviet Union not only ignores the accepted rules of customary international law, but carelessly fails to present the requisite elements needed to support a claim of interference in domestic affairs.¹⁸⁴

In general, customary international law recognizes that a state has jurisdiction to promulgate and enforce rules of domestic law affecting conduct solely within its borders while it lacks jurisdiction to draft or enforce laws affecting conduct occurring outside its territory.¹⁸⁵ However, these general rules are relaxed when international agreements or treaties are involved, for such instruments alter the traditional concepts of state sovereignty. Entering into an international agreement calls for specific types of performance or behavior. While such an agreement does not necessarily entitle one state to jurisdictional competence over another state, it does entitle each party to express its opinion as to the proper course of performance required by the agreement.¹⁸⁶ Thus, the issue of whether the subject matter of the agreement was previously within the exclusive domestic jurisdiction of one state is rendered moot, for it is presumed that by entering into an international instrument, a state is implicitly agreeing that all of the topics covered by that instrument are no longer within its exclusive domestic concern.¹⁸⁷ In other words, by virtue of an international agreement, subjects which once were of exclusive domestic jurisdiction are placed within the joint jurisdiction of all the parties to the agreement.¹⁸⁸

The fact that the international agreement does not create legally binding obligations but only creates moral or political responsibilities is immaterial to the issue of jurisdictional competence, for "[g]entlemen's agreements and other nonbinding political and moral undertakings are established instruments in international relations, and their violation brings important political and moral consequences."¹⁸⁹ As a result, the signatories to the Helsinki Final Act are not precluded from voicing complaints about alleged violations of the Act's provisions because of its

183. Henkin, *supra* note 93, at 21.

184. *See generally id.* at 37. (The Soviets are also forgetting their promise at Helsinki that human rights matters were no longer subjects of domestic jurisdiction and that criticism of a state's compliance with those provisions did not comprise intervention).

185. *See* J. SWEENEY, *supra* note 77, at 89.

186. *See* Schachter, *supra* note 93, at 304.

187. *Id.* Henkin, *supra* note 104, at 29.

188. *See generally* Cassese, *Approach, supra* note 181, at 289-90 (Matters which are governed by the principles of international law are *ipso facto* removed from the exclusive jurisdiction of a signatory state and have instead become matters of international concern for which all signatory states are accountable.); MOWER, *supra* note 33, at 119 (As a result of international agreements, certain topics will no longer fall within the exclusive domestic jurisdiction of states); Henkin, *supra* n. 93.

189. Henkin, *supra* note 93, at 29.

legally nonbinding status.¹⁹⁰ This fact, when coupled with the power of international agreements to remove subjects (such as human rights) from the exclusive jurisdiction of a state, means that any signatory to the Final Act is free to voice concern over violations of the Act's human rights provisions without being held liable for interference within the domestic affairs of the violating state.¹⁹¹

The Soviet's contention that criticism and monitoring of human rights compliance constitutes interference in their domestic affairs is marred by the Soviets' inability to present either of the elements necessary to support a claim of intervention in a state's domestic jurisdiction. This becomes readily apparent when these two components — "domestic jurisdiction" and "intervention" — are independently analyzed.

"Domestic jurisdiction" can be defined as "that which is not a proper subject of foreign or international concern . . ."; that is, any subject which is only the business of the relevant state.¹⁹² However, if international law or agreement plays a role in regulating a given topic, then by very definition, that subject is *ipso facto* outside the scope of domestic jurisdiction even if it originally was no one else's concern.¹⁹³ Additionally, if a state submits domestic subject matter to foreign or international jurisdiction, that topic will be regarded as being "defeasibly domestic" since such submission renders it a valid subject of international concern.¹⁹⁴

"Intervention" is the use of various means to influence foreign

190. See Kiss & Dominick, *supra* note 78, at 302.

191. *Id.* at 56; Russell, *supra* note 89, at 260; Schachter, *supra* note 93, at 304. See also Buergenthal, *supra* note 81, at 7 ("[P]eaceful reaction" to any violation of the human rights provisions contained in General Principle VII or Basket III does not constitute intervention or any other improper or unlawful act of interference with the allegedly violating state); Dimitrijević, *supra* note 69, at 270 (The contemporary political climate has enabled human rights in a foreign state to become a normal and permissible topic of universal concern and reference to foreign human rights situations will not be regarded as an act of hostile intervention); Goldberg, *supra* note 93, at 318 (Principle VII of the Final Act makes human rights the direct concern of all the signatory states); Henkin, *supra* note 93, at 25 (Insistence that the human rights provisions of the Final Act be honored and any resulting peaceful measures designed to induce compliance "are not interventions or other impermissible interferences in domestic affairs, but rather the proper and normal means and methods of the international system"); MOWER, *supra* note 33, at 119-120 (As a result of various international agreements including the Helsinki Final Act, human rights are "no longer exclusively domestic concerns." Consequently, it does not constitute intervention in a state's domestic affairs for another state to take "a stand against a bad human rights situation in another country . . ."). *Contra* Kiss & Dominick, *supra* note 78, at 302 ("The position that human rights issues are no longer solely matters of domestic concern is still controversial, however"); Dean, *supra* note 93, at 78 ("Soviet jurists, however, refuse to treat issues of human rights as matters of international concern").

192. Henkin, *supra* note 93, at 22.

193. *Id.* See generally Cassese, *Approach*, *supra* note 181, at 289-90 and *supra* note 188 and accompanying text (Regarding how international human rights agreements enabled human rights to expand beyond the scope of domestic control).

194. Henkin, *supra* note 93, at 22.

states, but it is better defined as "unlawful interference."¹⁹⁵ Most international agreements (including the Final Act) forbid intervention, in general, without distinguishing between that which is lawful and that which is not.¹⁹⁶

The very definitions of the elements which are necessary to support the Soviet's assertion that Western accusations of human rights violations constitute unlawful intervention in their domestic affairs illustrate the allegation's lack of substance. On the one hand, by becoming a party to an international human rights agreement, the Soviet Union has contributed to the removal of human rights from the scope of any one state's domestic jurisdiction.¹⁹⁷ As a result of the U.N. Charter, the Universal Declaration, the Helsinki Final Act, and other international human rights agreements, this entire field now resides outside the scope of exclusive domestic jurisdiction.¹⁹⁸ Consequently, no amount of international concern or external criticism can constitute intervention in a subject over which the Soviet Union lacks exclusive domestic control.¹⁹⁹

On the other hand, even if the Soviet Union did possess the requisite sole domestic jurisdiction over the topic of human rights, neither the West's expressions of its opinions nor its public criticisms as to Soviet behavior would provide the other key element to support the Soviet allegation.²⁰⁰ Under international norms, the peaceful criticism by a signatory of a co-signatory's violation of obligations assumed under an international instrument does not represent intervention or interference.²⁰¹ Consequently, no amount of criticism or expressions of disapproval by the West of Soviet practices regarding human rights constitutes

195. *Id.* ("Strictly . . . intervention means dictatorial interference by force or threat of force." Anything less than this may sour interstate relations or constitute "bad diplomatic manners" but will not violate any principle of international law). See also Clark, *Humanitarian Intervention: Help to Your Friends and State Practice*, 13 GA. J. INT'L & COMP. L. 211, 211 (1983) ("[I]ntervention is *prima facie* unlawful in internal conflicts"); Moore, *Legal Standards for Intervention in Internal Conflicts*, 13 GA. J. INT'L & COMP. L. 191, 196 (1983) (The U.N. Charter's principle of self-determination prohibits any intervention in an internal conflict so as to benefit one faction over another).

196. Henkin, *supra* note 93, at 22. See Final Act, *supra* note 78, at Basket I, Principle VI.

197. See Henkin, *supra* note 93, at 35.

198. *Id.*

199. *Id.*

200. *Id.* at 22. See also Buergenthal, *supra* note 81, at 7 (Criticism and peaceful acts and policies in response to human rights violations by a signatory state, even if intended to influence the violating state's behavior, are not unlawful or improper acts of intervention); Cf. Clark, *supra* note 195, at 211-12 (It is observed that humanitarian intervention in domestic conflicts does constitute such an act of interference and is, therefore, not supported under international law); *But see* Henkin, *supra* note 93, at 36 ("Scrutiny, criticism, or even encouragement or support to victims of human rights violations is not intervention . . . even if human rights remained a matter of domestic jurisdiction [and] even if it is designed to modify the target government's behavior in regard to human rights." Nor is it intervention for a state to shape its own policies so as to effect a policy change in another state).

201. Henkin, *supra* note 93, at 22.

intervention.²⁰²

VI. CONCLUSION

Upon the conclusion of an agreement between Germany and France, Charles De Gaulle allegedly commented that international agreements "are like roses and young girls; they last while they last."²⁰³ Even a legally nonbinding instrument can be considered as valuable authority for the parties involved as long as the provisions remain relevant.²⁰⁴ Rather than label the Helsinki Final Act as a great "diplomatic farce," as some disgruntled observers have done²⁰⁵ because of its overbroad and poorly drafted provisions, perhaps it would be better to realize that a legally nonbinding agreement is better than no agreement at all.²⁰⁶ Although it may not have been possible to obtain a more binding type of document at Helsinki, the negotiators did manage to embody in one instrument the vast majority of the political and moral values treasured by mankind.²⁰⁷ While the Final Act does not provide a panacea for all of mankind's ills, it can be used as a basis for future negotiators when seeking a more binding reinforcement of moral and political values.²⁰⁸

The Helsinki Final Act also serves to indicate that it is time to break away from human rights instruments as the primary source of authority for transnational broadcasting issues. While the human rights movement provides the fundamental freedom to receive and impart ideas and information regardless of national boundaries, it also indicates that more concrete provisions pertaining solely to this right are necessary. Because human rights issues are subject to such diverse interpretations due to varying socio-political perspectives, they cannot be truly helpful in resolving broadcasting disputes. Broadcasters' increased capacity to reach larger global audiences with a single transmission via direct broadcasting satellites [See Appendix] makes mere human rights instruments inadequate for resolving the complexities of modern technology. The right to exchange ideas and information across national frontiers has now come of age, and it must now develop its own set of governing international agreements.

For years, negotiators have formulated rules regarding frequency allocation and permissible and unlawful conduct, but it is now time for the

202. *See supra* note 200.

203. Schachter, *supra* note 93, at 304.

204. *See id.*

205. Freymond, *supra* note 151, at 71 ("By wanting to cover all possible subjects, the negotiators failed to deal with any in a satisfactory manner").

206. *See* Schachter, *supra* note 93, at 304.

207. *See generally id.*

208. *See id.*

negotiators to sit down and hammer out a concise and concrete set of norms which explicitly set forth guidelines for broadcast content.²⁰⁹ The negotiators should use black and white terminology without leaving any loopholes through which dissatisfied parties may escape via political interpretations. Only through such global coordination of rules affecting the content of transnational broadcasting can mankind escape from the quagmire of conflicting ideologies²¹⁰ and arrive at a state of "shared expectations"²¹¹ regarding what types of ideas and information are permissible in interstate relations. If negotiators do not act soon in drafting a coordinated system of rules regarding the content of radio and television transmissions, the steady advances in technology will render the Bishop of Ripon's words²¹² even more true in the 1980's than they were in the 1920's.

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209. *See generally* Bull. EEC 5-1984 at 12 (The Commission of the European Economic Community (EEC) has recently adopted a report calling for the establishment of a broadcasting common market in order to establish a code of practice for advertisers and to protect young people. While the EEC regards such a program as a tool for promoting integration, such a proposal also reflects the recognition on the part of a majority of the Western European states of a need for some type of commonly agreed upon standard regarding broadcast content).

210. *See generally* Dean, *supra* note 93, at 80 (Tunkin asserts that "formulation of international law is not a matter of ideological agreement, but of the coordination of rules governing the behavior of states").

211. Paust, *supra* note 76, at 69.

212. BARTLETT, *supra* note 1.

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APPENDIX
DIRECT BROADCASTING SATELLITES

[While neither intended nor designed to chronicle all of the ramifications of direct television broadcasting by satellites, this Appendix is included to permit a better understanding of how the many issues involved in transnational broadcasting come together in a "real world" context.]

Satellites can be utilized for many diverse purposes, but they are most likely to have the greatest impact upon the general public when they are employed for the relaying of television transmissions from a broadcaster directly to a viewer's home.²¹³

Essentially, direct broadcast satellites (DBS) are part of a three-step communications system involving a ground-based transmitter, a satellite in geostationary orbit, and at least one earth-based receiver.²¹⁴ Basically the DBS process involves the beaming of a signal from the transmitter to a satellite which, at a minimum, amplifies and converts the signal to a frequency suitable for retransmission and then rebroadcasts the signal to ground-based receivers (i.e., privately owned receiver dishes).²¹⁵ What makes DBS technology so unique is the technical advantage it offers broadcasters, for it enables signals to travel a greater distance without the use of relay stations since DBS signals are unaffected by the earth's curvature.²¹⁶ In terms of global mass communications, this means that vast amounts of the world's surface—potentially an entire hemisphere—can receive a broadcast emanating from a single satellite in geostationary orbit.²¹⁷

While DBS may be praised for permitting the instantaneous global dissemination of ideas and information, it can also be condemned for its

213. Flint, *Comment*, INT'L BUS. LAW., October 1983, at 3 [hereinafter cited as Flint, *Comment*].

214. Pikus, *Legal Implications of Direct Broadcast Technology*, 3 J. SPACE L. 39, 39 (1975).

215. *Id.*; Hagelin, *Prior Consent or the Free Flow of Information Over International Satellite Radio and Television: A Comparison and Critique of U.S. Domestic and International Broadcast Policy*, 8 SYRACUSE J. INT'L L. & COM. 265, 265 (1981).

216. Pikus, *supra* note 214, at 40. (Television signals essentially travel in straight line paths and, as such, are severely affected by the curvature of the earth's surface. Prior to DBS, the only way to send a television signal to distant points of the world was by establishing relay stations approximately every 75 miles of the way — a very difficult feat when oceans are involved).

217. *Id.* See Dausen, *Direct Television Broadcasting By Satellites and Freedom of Information*, 3 J. SPACE L. 59, 59 (1975). See also Hagelin, *supra* note 215, at 267-68 (one DBS signal can affectively reach 40% of the world's surface). See generally Yaroshenko, *supra* note 19, at 73 (Because of the tremendous strength of its signals, DBS could provide remote parts of the globe with a "comparatively inexpensive" means of accessing television programming).

host of attendant problems. Besides the threshold problem of raising adequate funds to construct, launch and maintain a satellite in geostationary orbit, DBS suffers from many other problems. These problems include, technological problems (e.g., interfering with domestic broadcasting carried out on identical frequencies, interfering with other satellites, and further crowding the broadcast spectrum),²¹⁸ economic problems (e.g., adversely impacting upon local media structures by creating additional competition within the local market and thereby diverting advertising funds away from the weaker domestic broadcasters in favor of the much stronger international broadcasters)²¹⁹ legal problems (e.g., the breakdown of national broadcasting laws),²²⁰ and copyright and intellectual property protection problems.²²¹ However, the most significant issue associated with DBS is a political problem: namely, the ideological conflict between the Western concept of freedom of expression and information and the Soviet (as well as Third World) view of the supreme sovereignty of states.²²²

This ideological conflict between East and West regarding DBS transmissions is merely an extension of the terrestrial version of the debate. Just as earth-based radio and television signals ignore national borders²²³ so, too, do DBS transmissions.²²⁴ This disregard of national frontiers can be viewed in two contexts, for not only can DBS be employed by a private party or state government to *intentionally* beam broadcasts directly to the citizens of other states,²²⁵ but because it is technically impossible to confine the down-leg signal to a specific geopolitical region without experiencing any spill-over into adjoining states, DBS can *accidentally* cross national boundaries as well.²²⁶ Regardless of whether a transmission intentionally or accidentally crosses the boundaries of another state, since DBS goes directly to independent receiver rather than

218. Pikus, *supra* note 214, at 44. See Flint, *Comment, supra* note 213, at 3.

219. See Jehoram, *Satellite Television in Europe*, INT'L BUS. LAW., October 1983, at 17, 20. See also YAROSHENKO, *supra* note 19, at 73 (regarding the impact of international television upon the development of domestic television). See generally Patermann, *Applicable Law in Cases of Tort Damages Caused by Direct Broadcast Satellites*, 3 J. SPACE L. 47, 47 (1975) (for the application of private international law to tort damages resulting from DBS).

220. Jehoram, *supra* note 219, at 17.

221. Dauses, *supra* note 217, at 60.

222. See Jehoram, *supra* note 219, at 17, 19; Dauses, *supra* note 217, at 60, 67.

223. See *infra* p. 255.

224. Flint, *Signal Reception and Piracy*, INT'L BUS. LAW., October 1983, at 3.

225. Hagelin, *supra* note 215, at 267.

226. Flint, *Comment, supra* note 213, at 3. See generally Pikus, *supra* note 214, at 40 (Even though specific types of antennae have been developed which would help restrict the potentially hemispheric zone of coverage of a DBS transmission to a more limited region of the globe, it is not possible to structure the down-leg transmission to conform to the geographic shape of a given state so that the signal would be received solely within that state's boundaries); *Id.* at 41-44 (Even a broadcast beam only 3 degrees wide has the capacity to saturate an area greater than 1100 miles in length — an area which is far longer than most countries).

to state owned relay stations (as would conventional television or radio signals), a receiving state cannot exercise any control over these transmissions except by engaging in the highly suspect act of jamming.²²⁷

The unique potential of DBS, as well as the plethora of problems associated with it, have given rise to a significant amount of global debate regarding the formulation of international guidelines or regulations regarding DBS.²²⁸ Unfortunately, the states of the world have reached very little agreement in spite of more than twenty years of public and private consultations on the issue.²²⁹

While a handful of international agreements such as the "Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange" have enunciated some basic guidelines regarding DBS transmissions in general,²³⁰ for the most part, the states of the world have been unable to resolve the fundamental issue of "whether satellite broadcasting across national boundaries should be subject to the prior consent of the country receiving the signal."²³¹

The world has divided itself into three schools of thought—one led by the Soviet Union, one led jointly by Canada and Sweden, and one led by the United States²³²—regarding the issue of prior consent (i.e., the requirement that prior authorization must be obtained from a potential receiving state before a broadcasting state commences the transmission of DBS signals to that state).²³³ The Soviet Union leads the largest of the three groups and, out of its concern for the cultural and political impact which unrestricted transmissions might have upon the socialist and third world countries,²³⁴ it has enunciated the position that every state has the

227. Pikus, *supra* note 214, at 42.

228. See Hagelin, *supra* note 215, at 268. See generally YAROSHENKO, *supra* note 19, at 73 ("To solve these problems there must be international cooperation between the states, a definite set of norms and rules must be established . . .").

229. See Hagelin, *supra* note 215, at 268.

230. U.N. Doc. A/AC. 105/109/Corr. 1 (1973). See Dausés, *supra* note 217, at 60-61 (Article V (1) states that "the objective of satellite broadcasting for the free flow of information is to ensure the widest possible dissemination, among the peoples of the world, of news of all countries . . ."); Patemann, *supra* note 219, at 53 (Article X calls for broadcasting states to take into account the "differences in the national laws of the countries of reception" when preparing programs which will be directly broadcasted to other states).

231. Robinson, *supra* note 6, at n. 11.

232. See Hagelin, *supra* note 215, at 268-69.

233. See Dausés, *supra* note 217, at 65.

234. See Robinson, *supra* note 6, at n. 11. See also Hagelin, *supra* note 215, at 268 (The Soviet position is designed to protect domestic cultural values as well as internal communications systems). Cf. Dausés, *supra* note 217, at 62 (The Soviet position reflects the misgivings of Communist states and a certain number of developing countries about their possibly being discriminated against by the rapid advancement of space science and technology"). See generally Jehoram, *supra* note 219, at 19 ("[A] special obsession of 4/5 of the Member States of the United Nations, the Second and most of the Third World" are adverse to the unrestricted exchange of information permitted by DBS).

absolute sovereign right to control all communications entering within its boundaries.²³⁵ The Soviet position calls for the mandatory consent of the recipient state before the initiation of any DBS transmissions.²³⁶ In addition, the Soviet position calls for the creation of an international code of content to police all DBS transmissions. This code of conduct would preclude all such transmissions which:

(i) threatened international peace; (ii) interfered with the internal affairs of another state; (iii) encroached on fundamental freedoms, specifically the right to be free from discrimination based on race, sex, language or religion; (iv) propagandized or promoted violence, horrors, pornography, and the use of narcotics; (v) misinformed the public on local culture and traditions; or (vi) misinformed the public on these enumerated matters.²³⁷

The second group of countries is jointly led by Canada and Sweden and calls for a middle ground approach to the resolution of the prior consent issue.²³⁸ The Canada/Sweden position concurs with the Soviet view that every state has the sovereign right to regulate all DBS transmissions within its borders, but it rejects the call for the international implementation of a content code.²³⁹ Instead, it has proposed more localized content guidelines in the form of "regional and bilateral arrangements for international DBS service which [will] insure that all recipient states participate in the production of imported programming."²⁴⁰

The third group (if it can be considered a group) essentially consists of the United States.²⁴¹ Unlike the first two groups, the United States has expressly rejected the idea of prior consent on the grounds that such a requirement could seriously impair the concept of freedom of expression, information, and ideas regardless of national frontiers.²⁴² For similar reasons, the United States has also rejected the call for the

235. See Hagelin, *supra* note 215, at 268.

236. See Dauses, *supra* note 217, at 62. See also G. WETTIG, *supra* note 18, at 57 (According to Soviet Foreign Minister Andrei Gromyko in his speech of August 8, 1972, "Any state planning to set up a system for the sending of television by satellite *must* — if there is any chance that the proposed transmissions will 'be a source of potential damage to, or lead to the unintentional radiation of, other sovereign states,' enter into prior consultation with the governments of those countries likely to be affected." [emphasis added]. Consequently, if a state were to engage in DBS transmissions without the express prior consent of the recipient state, the broadcast would be 'regarded as illegal' and the broadcasting state 'would be held responsible according to international law.')

237. Hagelin, *supra* note 215, at 269.

238. *Id.* See also Dauses, *supra* note 217, at 64 (Argentina is often regarded as a leader of this group as well).

239. See Hagelin, *supra* note 215, at 269; Dauses, *supra* note 217, at 64.

240. Hagelin, *supra* note 215, at 269.

241. *Id.*

242. See *id.*; Dauses, *supra* note 217, at 63; Robinson, *supra* note 6, at n. 11.

implementation of an international code regarding DBS content.²⁴³ The United States, in recognizing the “generalized duty to respect the cultural traditions and sensibilities of other states,” has instead suggested a virtual *laissez-faire* approach by recommending that international authorities should stand back and allow the situation to be resolved by private negotiations and arrangements.²⁴⁴

Although many countries have attempted to formulate international policy regarding DBS content, they have become trapped in the same quagmire of conflicting ideologies that has trapped the negotiations regarding terrestrial radio and television broadcasting. If negotiators do not extricate themselves from this quagmire and come to some sort of an understanding, the present state of disagreement as to DBS policy will rapidly deteriorate into total broadcast chaos.²⁴⁵

243. See Hagelin, *supra* note 215, at 269.

244. See *id.*

245. See *id.* at 270.