

RADIO PROPAGANDA—A MODEST PROPOSAL

Once again the attention of students of international law and relations has been directed to the use of propaganda as an offensive weapon of power politics. President Eisenhower, in his historic speech last August before the United Nations, included in his comprehensive plan for the Middle East a proposal for a system of monitoring inflammatory broadcasts.¹

The problem of establishing controls over communications of a nature to cause misunderstanding, induce subversion, and incite nations to hatred and even to war, is one of extreme difficulty. Diplomats and jurists in the halls of both the League of Nations and the United Nations have wrestled valiantly with it, and it has been explored by leading authorities, notably Lauterpacht, Hyde, and Quincy Wright.² In the inter-war period, valuable contributions to an understanding of the subject were made by Preuss, Van Dyke, and others.³ Lately, however, particularly since World War II, the subject has been largely neglected by the international lawyer at the same time that it has been given ever-increasing attention by the power politics school.⁴

In the field of law, both international and municipal, there exists already a considerable body of norms which may be invoked against states claimed to be guilty of employing harmful propaganda. Thus, Oppenheim states on the basis of an impressive list of authorities:

while subversive activities against foreign states on the part of private persons, do not in principle engage the international responsibility of a state, such activities (i.e., revolutionary propaganda), when emanat-

¹ 39 Dept. of State Bulletin 337-342. (1958). President Eisenhower stated as follows: "I believe that this Assembly should reaffirm its enunciated policy and should consider means for monitoring the radio broadcasts directed across national frontiers in the troubled Near East area. It should then examine complaints from these nations which consider their national security jeopardized by external propaganda." *Ibid.* 339.

² 1 Oppenheim, *International Law* 293 (8th ed., Lauterpacht, London, 1955); Lauterpacht, "Revolutionary Propaganda by Governments," 13 *Grotius Society Transactions* 143 (1928); *idem*, "Revolutionary Activities by Private Persons against Foreign States," 22 *A.J.I.L.* 105 (1928); 1 Hyde, *International Law, Chiefly as Interpreted and Applied by the United States* 606 ff. (Boston, 1945); Wright, "The Crime of 'War-Mongering,'" 42 *A.J.I.L.* 128 (1948); also Stone, *Legal Controls of International Conflict* 318-323 (New York, 1954), and Fenwick, "The Use of Radio as an Instrument of Foreign Propaganda," 32 *A.J.I.L.* 341 (1938).

³ Preuss, "La répression des crimes et délits contre la sûreté des Etats étrangers," 40 *Rev. Gén. de Droit Int. Public* 606 (1933), and "International Responsibility for Hostile Propaganda against Foreign States," 28 *A.J.I.L.* 649 (1934); Van Dyke, "The Responsibility of States for International Propaganda," 34 *ibid.* 58 (1940).

⁴ Morgenthau, *Politics Among Nations* 136 ff., 346 ff. and *passim* (2d ed., New York, 1955); Haas and Whiting, *Dynamics of International Relations*, Ch. 9, "Propaganda and Subversion" (New York, 1956); Palmer and Perkins, *International Relations* 189 ff., Ch. 6, "Propaganda and Political Warfare as Instruments of National Policy" (Boston, 1953). For the importance of communications in the present approach to the study of international relations, see Wright, *The Study of International Relations*, chapters on International Communication, International Education, the Psychology of International Relations, and *passim* (New York, 1955).

ing directly from the government itself or indirectly from organizations receiving from it financial or other assistance, or closely associated with it by virtue of the constitution of the state concerned, amount to a breach of international law.⁵

Hyde expresses a similar view.⁶ Also, if it is illegal for a state to engage in aggressive war, incitement thereto, through radio propaganda or otherwise, may properly be considered a violation of an international duty.⁷ Similarly, some abusive or inflammatory international propaganda can be held to be outlawed as a type or corollary of unlawful intervention.⁸ Furthermore, since it is recognized to be illegal for a state to permit the formation of armed bands on its territory for the purpose of supporting foreign insurrection, acts of propaganda by individual groups, if waged as part and parcel of such unlawful preparations, should likewise come under the ban of the law, so that the state concerned would be enjoined to suppress or punish the authors.⁹

Municipal law also offers a means of checking abuses in the field of international communication. The numerous local laws in this field have been admirably summarized by Professor John L. Martin in a recent study.¹⁰ The more authoritarian the states concerned, especially new regimes with a profound sense of insecurity, the more numerous and the more severe such laws appear to be. Most of this legislation is of purely internal and local significance, but some is designed specifically to reduce international tensions, and otherwise forestall conflict. Some of this legislation is designed to curb subversive and war-mongering propaganda, including such activities by refugees. The wide prevalence of these rules may be evidence of the emergence of general principles of law which could be invoked as a salutary restriction on unsocial conduct by states in the field of communication.¹¹

We cannot accept the pessimistic conclusion voiced recently by one author, namely, that the wide use of hostile propaganda by so many states of the world today is proof of its legality. Numerous protests against abuses in this field should be sufficient to prevent the emergence of a rule of customary law condoning such practices. The author's assertion that "protest without further action will not necessarily preserve the rights of the state" appears to be entirely too sweeping, and does not represent the accepted view of the evolution of custom as a source of international law.¹²

⁵ *Op. et loc. cit.*

⁶ *Op. cit.* 606.

⁷ Whitton, "Propaganda and International Law," 72 Hague Academy Recueil des Cours 596 ff. (1948); Wright, *op. cit.* 132 ff.

⁸ "Intervention by Propaganda," in Thomas and Thomas, *Non-Intervention, the Law and Its Import in the Americas* 273-302 (Dallas, 1956).

⁹ Lauterpacht and Preuss, cited notes 2 and 3 above, and Whitton, *loc. cit.* 588 ff.

¹⁰ L. John Martin, *International Propaganda* 109-163 (Minneapolis, 1958); Whitton, *loc. cit.* 595 and *passim*. See also Soviet and other Communist laws on "Offenses against the Peace and Security of Mankind," 46 A.J.I.L. Supp. 34, 99 *et seq.* (1952).

¹¹ Martin, *op. cit.* 55, 109 ff.

¹² *Ibid.* 173; 1 Rousseau, *Principes Généraux du Droit International Public* 129, 843 (Paris, 1944).

A number of states have accepted, through treaty, significant restrictions on their freedom to disseminate certain categories of messages, and have even bound themselves to repress certain kinds of communications emanating from private individuals. One of the earliest of such treaties was that between France and Russia, signed in 1801.¹³ Between the wars, Soviet Russia made a number of bilateral agreements by which each contracting party promised to abstain from propaganda injurious to the other. Of these treaties, the ill-fated Roosevelt-Litvinov Accord is a notable example.¹⁴ The Tangiers Agreement of 1928 between Spain, France, Great Britain and Italy, is interesting because of Article 10 stating that "Any agitation, propaganda or conspiracy against the established order in any of the Zones of Morocco or in any foreign country is prohibited."¹⁵ An agreement in 1931 between the German and Polish radio organizations bound the parties to take all reasonable steps to prevent the broadcasting over their respective stations of any material prejudicial to the spirit of co-operation and understanding in regard to politics, religion, economics, or intellectual or artistic matter.¹⁶ There were many other similar treaties between the wars.¹⁷ Since the second World War there have been only a few such instruments. The 1948 agreement between India and Pakistan is particularly noteworthy in that it contains mutual promises to

ensure that their respective organizations handling publicity, including publicity through radio and the film, refrain from and control: (a) propaganda against the other Dominion, and (b) publication of exaggerated versions of news of a character likely to inflame, or cause fear or alarm to, the population, or any section of the population in either Dominion.¹⁸

Both the League of Nations and the United Nations have shown their deep concern for the problem of propaganda. The League, spurred on by the International Broadcasting Union¹⁹ and the International Institute of Intellectual Cooperation,²⁰ and by certain private international organizations,²¹ devoted over ten years to the effort to curb pernicious propaganda. The problem of broadcasting first came before the League in 1926,²² but it was not until 1936 that an official conference was called at Geneva to draw up a convention, entitled, "Convention Concerning the Use of Broadcasting in the Cause of Peace." While this convention came to naught, its fifteen articles and seven recommendations constitute one of

¹³ Art. III, Treaty of Oct. 8, 1801, 7 Martens 386; Martin, *op. cit.* 89-90.

¹⁴ 28 A.J.I.L. Supp. 1-20 (1934).

¹⁵ 13 Martens 246 (3rd ser.), and 21 *ibid.* 70; Whitton, *loc. cit.* 622; 23 A.J.I.L. Supp. 238 (1929).

¹⁶ League of Nations Doc. 602. M. 240. 1931. IX-IX Disarmament. 1931.IX.19.

¹⁷ Martin, *op. cit.*, Ch. 5.

¹⁸ U.N. Doc. E/CN.4/Sub. 1/105, p. 29.

¹⁹ Records of the 9th Ordinary Session of the Assembly, Plenary Meetings, p. 471.

²⁰ Broadcasting and Peace 115 (International Institute of Intellectual Cooperation, Paris, 1933); Whitton, *loc. cit.* 618 ff.

²¹ Whitton, *loc. cit.* 616 ff.

²² L. N. Official Journal, 1926, p. 1191.

the most comprehensive treaties ever drafted to deal with the evils of broadcasting.²³

The United Nations has also given considerable attention to the problem. Much of its work in this field centered on the preparations for and the drafting of the Convention on Freedom of Information and of the Press (1948). Three draft conventions, two articles proposed for inclusion in a Declaration and Covenant of Human Rights and some forty resolutions were approved by the fifty-four states represented, most of them by overwhelming majorities.²⁴ It was declared to be a moral obligation for the press and other agencies of information to seek the truth without prejudice, and to report the facts without malicious intent. The conference in general stressed moral responsibilities rather than government controls as a means of solving the problem of communications dangerous to peace, but it took a forward step in strongly condemning all propaganda of a nature to provoke or encourage threats to the peace, breaches of the peace, or acts of aggression, and all distortion or falsification of news through whatever channels, private or governmental. The conference expressed the conviction that only a free press can serve to counteract the dissemination of racial and national hatred and curb propaganda of aggression toward national, racial, or religious groups. It was also voted (the United States abstaining) that the governments may impose penalties for the systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples or states.²⁵ Another step was the adoption of the French proposal for an international right of official correction with provision for the resort to United Nations machinery if any state failed to discharge its obligations, as set forth in the convention, to make a corrected version of facts available to the information agencies in its territory.²⁶

We should also mention certain actions of the General Assembly in 1947 and 1950. In 1947, by unanimous vote, a resolution was adopted condemning all forms of propaganda of a nature to provoke or encourage any threat to peace, breach of the peace, or act of aggression, and governments were requested to promote, by all appropriate constitutional means of publicity and propaganda, friendly international relations.²⁷ In 1950 the General Assembly passed a resolution on "Peace through Deeds" condemning direct and indirect aggression as a crime against peace and security, and a resolution entitled "Condemnation of Propaganda Against

²³ *Ibid.*, 1936, p. 1437; 32 A.J.I.L. Supp. 113 (1938).

²⁴ Final Act of the United Nations Conference on Freedom of Information, Docs. E/Conf. 6/79, E/727 and E/727/Add. 1; Whitton, "The United Nations Conference on Freedom of Information and the Movement against International Propaganda," 43 A.J.I.L. 73-87 (1949).

²⁵ Whitton, *loc. cit.* 81 ff., and Hague Recueil, note 7 above, p. 631.

²⁶ *Idem.*, "An International Right of Reply!" 44 A.J.I.L. 141 (1950); U.N. General Assembly, 3rd Sess., Official Records, Pt. II (April 5-May 18, 1949), p. 21 ff.

²⁷ U.N. General Assembly, 2nd Sess., Official Records, Resolutions (Doc. A/519, 1948), p. 14; U.N. Yearbook 1947-1948, pp. 91-93. Resolution 110 (II), Measures to be Taken Against Propaganda and the Inciters of a New War.

Peace," in which, in particular, incitement to conflicts or acts of aggression was decried.²⁸

The Organization of American States, through almost continuous activity in this field, has demonstrated its intense preoccupation with the problem of international propaganda.²⁹ Thus, as early as 1935, at the 7th Pan American Conference, the matter was discussed and certain general recommendations adopted,³⁰ but at Buenos Aires, in 1935, more positive action was taken; there the South American Regional Agreement on Radio Communications was signed. The co-contractants pledged themselves to control the sources and accuracy of information broadcast, avoid defamatory transmissions, and abstain from favoritism to political and social parties operating in other adhering states.³¹ In 1936, at the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires, three major resolutions concerned with broadcasting and peace were adopted. Adherence to the 1936 Geneva radio treaty was recommended, and signatories were warned to avoid broadcasting likely to disturb peaceful relations or wound the national susceptibilities of foreign listeners. The positive use of radio for the betterment of international relations was strongly recommended there,³² as well as at Rio de Janeiro in 1937,³³ and at Lima in 1938.³⁴

Since the war, these efforts have been resumed. Article 15 of the Charter of the Organization of American States, adopted at Bogotá in 1948, directed against intervention, is broad enough to include some types of propaganda.³⁵ Also at Bogotá, the American Republics voted to adopt measures against activities instigated abroad and designed to overthrow their institutions by violence, to foment domestic disorder or

to disturb, by means of pressure, subversive propaganda, threats or by any other means, the free and sovereign right of their peoples to govern themselves in accordance with their democratic aspirations.³⁶

In 1949, a dispute arose between the Republic of Santo Domingo and Haiti, the latter claiming to be a victim of "moral aggression," as one of its former colonels, taking refuge in Santo Domingo, had made "extremely vulgar and provocative broadcasts" aimed at the overthrow of the Haitian Government.³⁷ After the matter had been submitted to the Council of

²⁸ U.N. General Assembly, 6th Sess., Official Records, Supp. No. 1 (Doc. A/1844, 1951), p. 65; U.N. Yearbook, 1950, pp. 203-204.

²⁹ Whitton, note 7 above, p. 624 ff.

³⁰ U. S. Department of State, Conference Series, No. 19 (1934), p. 279 ff.

³¹ 7 Hudson, International Legislation, No. 407 (Washington, 1931).

³² U. S. Department of State, Conference Series, No. 33 (1937); LeRoy, "Treaty Regulation of International Radio and Short Wave Broadcasting," 32 A.J.I.L. 719, 729 ff. (1938).

³³ LeRoy, *loc. cit.* 730 ff.

³⁴ Pan American Union, Congress and Conference Series, No. 27.

³⁵ 1 Annals of the Organization of American States 77 (1949); 46 A.J.I.L. Supp. 46 (1952).

³⁶ Annals, *op. cit.* 134.

³⁷ *Ibid.* 217-219.

Consultation of the Organization of American States, the two states settled the matter *à l'amiable*, agreeing not to

tolerate in their respective territories the activities of any individuals, groups, or parties, national or foreign, that have as their object the disturbance of the domestic peace of either of the two neighboring Republics or of any other friendly Nation.³⁸

In April, 1950, the OAS Council called upon the governments of Haiti and the Dominican Republic to avoid all systematic and hostile propaganda against one another or against any American country.³⁹

As a result of this incident, the Department of International Law was directed by the OAS Council to draft a protocol for discussion at the Caracas Conference, later eliminated, calling on the signatories to agree to prevent the use of radio disseminating systematic and hostile propaganda against the government of any one of them, with the object of provoking rebellion or encouraging its overthrow by violence.⁴⁰

We should also mention the Second Meeting of the Inter-American Council of Jurists, held in 1953 at Buenos Aires, where in Resolution XVII, "Draft Convention on the Regimes of Political Exiles, Asylees and Refugees," we find in Article 6 the following:

Freedom of expression of thought and of speech, granted by domestic law to all inhabitants of a State, may not be ground for complaint by a third State on the pretext of opinions expressed publicly against it or its government by political exiles, asylees, or refugees, *except when they constitute propaganda tending to incite to the use of force or violence against the complaining State.*⁴¹ [Italics supplied.]

The vast body of law just reviewed—both international, including treaty law, and municipal law—and the thirty years of continuous effort by public and private international organizations, which we have adumbrated, is certainly impressive. But all this activity did little if anything to quell the violent propaganda battles of the inter-war period, nor is its influence

³⁸ *Ibid.* 326.

³⁹ 3 *ibid.* 23 (1951).

⁴⁰ Art. VII, referring to radio propaganda, and which was proposed as part of the revised Convention on Duties and Rights of States in the Event of Civil Strife, read as follows: "Article VII. The Contracting States agree or collaborate, within the limits of their respective constitutional powers, in preventing the use of the radio to carry on systematic and hostile propaganda, the object of which is to incite to the use of force or violence against the government of any Contracting State." 5 *Annals of the Organization of American States* 305 (1953). The United States opposed Art. VII, arguing that it was "fraught with grave dangers to freedom of speech, sacred to this Hemisphere and to democratic countries everywhere." Fenwick, "Proposed Control over the Radio as an Inter-American Duty in Cases of Civil Strife," 48 *A.J.I.L.* 289-292 (1954). Due to the attitude of the United States and other governments, Art. VII was eliminated from the final draft. Protocol to the Convention on Duties and Rights of States in the Event of Civil Strife, opened for signature May 1, 1957 (Pan American Union, Treaty Series No. 7, Washington, D. C., 1957). This view reflects the typical hesitation found in many free countries to accept obligatory norms which, while designed to curb abuses, necessarily carry with them certain limitations on freedom of speech and expression.

⁴¹ 5 *Annals of the Organization of American States* 166 (1953).

very apparent today. Learned writers come and go, with their norms, *lex lata* and *lex ferenda*, but the propaganda seems to go on forever. The Hertzian signals among rival Arab states have been virulent in tone, some, it is claimed, even suggesting the assassination of rival leaders.⁴² The Voice of America and Radio Free Europe are considered so dangerous by Soviet Russia that the latter is actually spending more for jamming our programs than the American Government devotes to its entire budget for communications.⁴³ But the effort for control will and must continue. The international lawyer particularly, however discouraging the task, must persist in his attempt to define propaganda and to restrict its use by appropriate legal norms. And the expert on international organization, for his part, must try to discover appropriate procedures of collective supervision and control, and attempt to induce states, in the common interest, to accept them.

That there is still an opportunity for innovation in this field is the striking conclusion one may draw from President Eisenhower's recent proposal. True, the monitoring of broadcasts is not new. It was an invention of the inter-war period, widely used by dictatorships between the two wars and then adopted by all the belligerents on a broad scale in World War II. Today the monitoring of foreign broadcasts is an accepted adjunct of the intelligence services of all leading Powers. But monitoring by a great world organization is new. It would appear to have great potentialities, and deserves the most careful consideration. Investigation and publicity, leading to deliberation and recommendation, constitute today our most reliable procedures for peaceful settlement, even in the world of the "cold war." These procedures proved their worth once more during recent crises, notably on the occasion of the war scares over Suez and in Jordan and Lebanon. Charges and counter-charges of the misuse of radio and other types of propaganda, especially the subversive and war-mongering types, could be reported by an official agency of the United Nations, located preferably at Geneva. As a result the participants could be called on to explain the source and nature of the offensive communications before a meeting of a committee of the United Nations, or perhaps even before the United Nations General Assembly itself. This could lead to the kind of "quiet diplomacy" for which the present Secretary General is so justly renowned. The consequence might be to provide additional substantiation for the conclusion by Martin in his recent book, that "(T)he control of propaganda will remain in the municipal laws of states and the bargaining power of diplomacy."⁴⁴

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⁴² New York Times, Aug. 15, 1958.

⁴³ U. S. News and World Report, Aug. 29, 1958, p. 47; New York Times, Aug. 14, 1958.

⁴⁴ *Op. cit.* 207.