

# ON REGULATING INTERNATIONAL PROPAGANDA: A PLEA FOR MODERATE AIMS

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The Draft Declaration on Rights and Duties of States is a fatuous document not because it purports to restrict sovereign discretion but because the norms of restriction are so abstract and overgeneralized as to be detached from the realities of international order.<sup>1</sup> Article 1 declares that "every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government." Article 3 prescribes that "every State has the duty to refrain from intervention in the internal or external affairs of any other State," and article 4 prescribes that "every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife." These legal principles are broad endorsements of the Westphalia system of organizing international society, in which the sovereignty of the nation-state is the prime organizing conception. Any attempt to implement the Westphalia system by specific restraints on the behavior of states is bound to fail. International politics are inevitably interventionary so long as international conflict persists among states of significantly unequal power and no centralized machinery for its effective regulation can be brought into being. Given this decentralized structure, international law must concentrate upon the regulation of mutually destructive forms of conflict through the formulation of and adherence to "rules of the game"; these rules arise from an underlying supposition (1) that conflict is a persistent attribute of the international system, and (2) that reliance upon coercion below certain thresholds of intensity and magnitude to attain a successful resolution of conflict is unavoidable in the present international system.<sup>2</sup> Certain forms of hostile propaganda help to resolve international conflict by coercive competition without endangering the basic peace and security of the world, and deserve to be tolerated in the interests of world order; other forms of propaganda are detrimental. It is the objective of this essay to develop some tentative

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<sup>1</sup> For a convenient text of the Draft Declaration, see BASIC DOCUMENTS OF THE UNITED NATIONS 26-27 (Sohn ed. 1956).

<sup>2</sup> For a useful conceptualization of the problem of specifying the threshold separating the upper limit of permissible coercion from the lower limit of impermissible coercion, see Burke, *The Legal Regulation of Minor International Coercion: A Framework of Inquiry*, in *ESSAYS ON INTERVENTION* 87 (Stanger ed. 1964). My approach to the regulation of international propaganda is based upon seeking to identify the circumstances under which it is beneficial to classify propaganda on the impermissible side of the threshold and those when it is not. I argue that it is not desirable to characterize *all* international propaganda of a hostile variety as impermissible.

guidelines relevant to drawing the distinction just mentioned in a rational way given the values and policies at stake.

Prior proposals to regulate international propaganda have been overgeneralized. They have failed to condition the regulatory claim by reference either to the *relatively decentralized* structure of international society or to the rather *diverse* patterns of international conflict. The consequence is the drafting of proposals that possess a legalistic quality in the sense that abstract rules and procedures are recommended without any detailed awareness of their impacts on international behavior. One supposes that such proposals, like the Draft Declaration, would not be implemented in any way that would seriously infringe upon a state's freedom of action. Hence, the enactment of the proposal would add to the corpus of international legal doctrine without altering prevailing patterns of international practice. The approach herein adopted is the reverse, to alter the behavior of states without any accretion to the formal doctrines of international law.

## I

### AN INVENTORY OF ADVERSE CONSIDERATIONS

Propaganda is most generally defined as the use of symbols to influence audiences.<sup>3</sup> Propaganda so defined is too elusive to be susceptible to regulation, if only because its character is too vague and its quality too neutral. As has been often pointed out, propaganda may be put to beneficial or detrimental use. Are there any reliable criteria by which to identify propaganda that is sufficiently detrimental to be classed as impermissible? Among substantive criteria that have been suggested are the truthfulness of the content and the legality of the action proposed; thus any propaganda that is false or advocates illegal conduct should be prohibited. Some further restriction of the regulatory task would follow from the suggestion that international regulation be limited to propaganda activities under government auspices, in which the message is transmitted across an international frontier. Private dissemination of international propaganda would thus be unregulated except to the extent that it was restricted as a matter of national policy. In the liberal democracies national discretion is itself subject to the constitutional protections accorded free speech.

Various procedures for centralizing the identification of impermissible propaganda have been proposed. The objective of such centralization is to overcome self-serving interpretations of the permissibility of propaganda that would be likely in the event that regulation was based upon self-enforcement at the national level.

At the present time efforts to regulate international propaganda concentrate upon three main clusters of communication conceived to be impermissible because of their detrimental effects upon the peace and order of international society:

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<sup>3</sup> For a representative sampling of definitions, see L. JOHN MARTIN, *INTERNATIONAL PROPAGANDA* 10-20 (1958).

1. Warmongering—the incitement to war and uses of force in international relations.
2. Subversive intervention—the incitement of audiences to take illegal action against their own government.
3. Defamation—the vilification of foreign governments and of their political leaders.<sup>4</sup>

It is the position of this article to oppose the use of international law to regulate international propaganda at the present time, except in very selective instances. Such an argument is advanced despite an awareness that propaganda may be used to incite violence and raise tensions in international relations and that the technology of propaganda increasingly threatens to manipulate human beings in dangerous directions that may not even reflect their conscious values.<sup>5</sup>

The argument stresses several distinct considerations. First of all, the prohibition of international propaganda must be related to the over-all universe of propaganda. If this is done it will appear that the most coercive forms of propaganda are not connected with the manipulation of foreign audiences but with the manipulation of domestic public opinion. Even in nation-states with long traditions of respect for democratic values, there is an increasing tendency to use propaganda techniques to generate support from the domestic public for controversial policies of government, including especially support for military undertakings carried out in foreign countries. International law makes no general claim to be able to regulate the relationship between a domestic government and its own population, nor do the main advocates of regulation propose such general coverage. The advocates of international regulation of propaganda are, by and large, concerned with transmissions across national boundaries. To isolate this form of propaganda from the over-all context of hostile propaganda seems to be an endeavor which, even if successful, will not contribute to world peace in any significant manner. The more likely consequence of such partial regulation is to assure that national governments achieve proportionately more exclusive control over the transmission of propaganda to their own population. Such a development would merely intensify the sorts of international misunderstandings that arise from trends toward the nationalization of truth; as well, such insulation would have a tendency to strengthen the over-all role of national sovereignties in international society.

Second, the ideological dimension of contemporary international society prevents the formation of the sort of consensus that would be necessary to draw a distinction between permissible and impermissible forms of international propaganda. There

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<sup>4</sup>For delimitation of each of these three categories and helpful clarification of the legal issue relevant to each, see JOHN B. WHITTON & ARTHUR LARSON, *PROPAGANDA: TOWARDS DISARMAMENT IN THE WAR OF WORDS* 62-132 (1964).

<sup>5</sup>A comprehensive analysis of the dangers posed by improved techniques of propaganda is found in JACQUES ELLUL, *PROPAGANDA* (1965).

is general agreement that "information" as distinct from "propaganda" should be permitted, if not encouraged. Often the advocates of international regulation of hostile propaganda are also advocates of prohibitions placed upon the right of recipient states to jam foreign broadcasts or to punish nationals for listening to them. It is, however, notoriously difficult in an era of ideological controversy to distinguish between impermissible propaganda and permissible information. There is no criterion of "truth" or "fact" generally available, as the content of the controversial message is typically a partisan interpretation of truth or fact, an interpretation following from adverse political values and contradictory goals of foreign policy. In the face of this essential ambiguity as to what is "false," it is naive and futile to expect either self-regulation by sending states or an agreed international formula to curtail national discretion to transmit propaganda. This point, although generally valid, admittedly can be carried too far. There are some incendiary distortions of fact that could be identified as such—for example, an allegation of germ warfare—and there is some ground for supposing that a regulatory apparatus, including perhaps a right of reply, might deter such falsehoods or, at least, moderate their impact.

Third, given the diversity of domestic systems of government, there is no agreement among nations about the proper dividing line between communications for which the state has a responsibility and those for which it has not; with respect to international propaganda, antidemocratic societies refuse to acknowledge a private sphere, whereas, in contrast, the liberal democracies underacknowledge the public control exerted over activities in the private sphere.

Fourth, as a result of decentralized sanctioning processes that operate in the international legal order, it is virtually impossible to regulate the behavior of nations unless the boundaries of impermissible conduct can be specified in fairly objective terms; as such boundaries are impossible to provide in relation to international propaganda, the prospect is that any regulating scheme would be arbitrarily interpreted and applied, if it were effective at all.

Fifth, the resolution of international conflict, especially in the nuclear age, depends to some degree upon the toleration of the less destructive forms of coercive competition in order to curtail recourse to more destructive forms. Intervention in internal affairs, of which international propaganda is one mode, is the characteristic form of coercive competition in the present era of international relations.<sup>6</sup> The organized international community lacks both the will and the capability to regulate such patterns of intervention, especially by the great powers. Thus the assertion of regulatory claims would produce ineffective international law in the event that international propaganda was dealt with in isolation from the over-all context of intervention. The declaratory prohibition of hostile propaganda would not alter pat-

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<sup>6</sup> I have developed this position elsewhere: Falk, *Janus Tormented: The International Law of Internal War*, in *INTERNATIONAL ASPECTS OF CIVIL STRIFE* 185 (Rosenau ed. 1964).

terms of behavior unless there was some machinery made available to implement the prohibition.

Sixth, given the coercive policies of totalitarian and semitotalitarian regimes, it is probably, on balance, desirable to allow *émigré* elites and hostile governments to transmit international propaganda, subject only to self-regulation voluntarily imposed at the national level. International propaganda of this variety may on occasion dangerously intensify hostility in international relations and, even worse, encourage premature uprisings against oppressive governments. There is reason to believe, however, that the flow of international communication produces pressures for social and political change which, although difficult to assess, may have a subtle moderating impact upon oppressive policies of foreign governments.<sup>7</sup>

Seventh, if the objective of propaganda is to condemn conduct that is viewed by a consensus approaching unanimity as threatening to the peace and order of international society, then propaganda that would otherwise be considered impermissible can operate as a legislative force in world affairs. In view of the absence of an international legislative organ, there is a need to find legislative substitutes that help the will of the international community to prevail over the absolute prerogatives of sovereignty claimed by dissenter states. The demands for social and political change in the countries of southern Africa illustrate a context within which a legislative role is being appropriately entrusted to international propaganda.<sup>8</sup>

In addition to developing support for these assertions, the discussion below will give some consideration to the major line of argument advanced by those who favor the regulation of international propaganda. In the course of this effort, certain restricted forms of international regulation—largely self-executed on the national level—will be acknowledged as desirable and feasible, despite my opposition to any general scheme of regulation. To examine the areas susceptible to constructive regulation, it is necessary to reformulate the case for regulating international propaganda in more specific terms than has been heretofore traditional in the literature on the subject; especially, this reformulation requires that we distinguish between (a) the over-all regulation of international propaganda by reference to the content of the message and (b) the more restricted regulation of international propaganda in the interests of upholding prior rules of law prohibiting recourse to violence in situations in which, first, the advocacy of international violence is made and, second, such advocacy has not been converted into a “sanction” through formal procedures by which violence may be authorized to carry out an international mandate. It may clarify this distinction between illegal force and legalized force to cite the call by the Arab countries for the destruction of Israel as an example of advocacy of illegal force and to identify

<sup>7</sup> Such a generalization is hazardous and imprecise, at best. International propaganda directed at certain oppressive regimes may merely harden their oppressive policies, thereby intensifying the malady that it intends to alleviate.

<sup>8</sup> See, in this regard, Nkosi, *Propaganda in the South African Struggle*, in *SOUTHERN AFRICA IN TRANSITION* 229 (Davis & Baker ed. 1966).

the call by the United Nations for its members to use force to hasten decolonization or to bring about the termination of *apartheid* in southern Africa as an example of an invocation of legalized force. The Arab plea is an international wrong, one component of a pattern of conduct violative of article 2(4) of the Charter to the extent that it consists of a threat to use force, whereas the plea by the United Nations may be considered to be an international sanction. This distinction admittedly evades the very real problem as to whether there are constitutional procedures available by which to test whether a particular authorization of violence by organs of the United Nations is itself compatible with the Charter and with general international law.

## II

### POLICY CONSIDERATIONS RELEVANT TO APPRAISING THE CASE FOR INTERNATIONAL REGULATION

There are several distinct, although overlapping, policy considerations that bear upon the decision whether and in what forms to regulate international propaganda. These policies do not point unvaryingly in one direction or the other, but require balancing.

1. *World Peace.* The basic impulse to regulate propaganda arises from the alleged impact of hostile propaganda upon peaceful relations among and within states. In effect, the claim of those favoring regulation is that hostile propaganda leads to political violence and aggravates international relations through its tendency to vilify its targets. Hostile propaganda functions as the ideological dimension of international conflict.

2. *Nonintervention.* Hostile propaganda across national boundaries interferes to some extent with the exclusive claims of the domestic regime to exercise governmental control. The interventionary impact of international propaganda is clearly at variance with the traditional conceptions of international legal order resting upon mutual respect for the legitimacy of the constituted government and expressed in normative terms by such doctrines as nonintervention, territorial and domestic jurisdiction, sovereign immunity, and sovereign equality.

3. *Freedom of Speech.* The regulation of international propaganda, if transmitted by nongovernmental broadcasters, may collide with the right of free speech. There is no internationally protected right of free speech or any obligation imposed by international law upon domestic governments to accord individuals rights of free speech. It is also argued that the truth should be respected in the course of international communication and upheld by an international right of reply granted to governments that believe themselves to have been the victims of misleading, false, or unfair propaganda. Leading states have very different conceptions of the scope of the right of free speech.

4. *Social Change.* International propaganda may function as a legislative instru-

mentality on occasion, especially to the extent that it registers a demand for social and political change that is endorsed by an overwhelming majority of the membership of the international community. As such, international propaganda can be alleged to operate as a sanction or as an authorized form of coercion.

5. *International Stability.* The adjustment of international relations to reduce the prospects of calamity requires the elimination of destructive forms of international conflict, and this implies the maintenance of channels for the expression of less destructive forms of international conflict. Above all, in this period of international history, the objective of war prevention takes precedence in the efforts to regulate the course of international relations. Propaganda as a weapon for the conduct of international conflict bears an indefinite relation to war prevention. On the one side we have the concern with peaceful relations, but on the other we have the need to tolerate the less destructive forms of international conflict to the uncertain extent that this toleration can be shown to inhibit recourse to more destructive forms. In an interdependent world beset by strategic conflict and by ideological controversy as to the proper form of domestic government, it would be artificial and impossible to eliminate ideological rivalries by international fiat. Such rivalries may erupt into political violence, but their promotion through hostile propaganda seems to accord with the structure of international society at the present juncture and their prohibition would tend to be ignored by major governments.

### III

#### THE CONDITIONING CONTEXT: PATTERNS OF INTERNATIONAL CONFLICT

The regulation of international propaganda is conditioned by the character of international conflict. The more specific relevance of this conditioning can be made clearer by distinguishing three standard types of conflict now prevalent in international society. These types operate as models of analysis, and their use may serve to show that many prior proposals for the regulation of international propaganda have suffered from overgeneralization. These models can in turn be correlated with a policy-oriented analysis of the relative utilities and disutilities of specific varieties of regulation.

#### A. Three Types of Conflict

##### *Type I: Primary Levels of Conflict*

International society continues to be dominated by the bipolar rivalry between the Soviet Union and the United States.<sup>9</sup> These superpowers uphold the security and exercise partial hegemony over portions of international society outside of their national boundaries. Each superpower relies for its security ultimately upon its

<sup>9</sup> For a useful depiction of the continuing bipolar domination of international society, see Waltz, *The Stability of a Bipolar World*, in I *THE STRATEGY OF WORLD ORDER* 186 (Falk & Mendlovitz eds. 1966).

capacity to inflict unacceptable damage upon the other if provoked beyond a certain point. The destructiveness of nuclear warfare for both sides creates the basis for peaceful coexistence. Marginal risks of nuclear war arising from a sequence of unanticipated consequences creates a strong common interest in adopting measures to reduce the risks of nuclear war, especially if these measures do not inhibit the pursuit of other goals in international life, such as the expansion of the sector over which national political influence exists.

Also, the immediate spheres of superpower concern are virtually impenetrable to its chief adversary. There is no present prospect of successful Western intervention in eastern Europe or of Soviet intervention in western Europe. At the same time, the maintenance of high tension levels makes it difficult to improve the safety of the international system. Hostile propaganda, in relation to cold-war conflict, freezes the *status quo*, accents distrust, and gives priority to national security through military strength.

The cause of international peace would be served by a *de facto* elimination of this sort of propaganda at the primary levels of international conflict. Such a specific objective is not suitable for any form of regulatory apparatus agreed upon through the negotiation of a treaty. What is called for is the voluntary demobilization of the domestic public with regard to its espousal of positions of ideological militancy, and this requires a defusing of hostility at home as well as a friendlier tone in transmissions abroad. More significant is the acceptance of the *status quo* at the main points of primary confrontation. International broadcasting could cease being an instrument of conflict and, instead, encourage a trend toward bipolar cooperation based on common interests and mutual respect for established spheres.<sup>10</sup>

No formal apparatus is needed to carry out this redirection of broadcasting energy. The elimination of hostile propaganda could proceed on the basis of mutual example, perhaps acknowledged as explicit strategy in quiet diplomacy between the two countries.<sup>11</sup> To make such a strategy overt might well be inadvisable and imprudent, implicitly advertising, as it would, that henceforth permissible and fruitful forms of primary struggle would be restricted to the areas of Latin America, Asia, and Africa, areas chosen as the battlegrounds where the war for world ascendancy could be waged without great risk to the principal adversaries.

### *Type II: Secondary Levels of Conflict*

There are certain international conflicts that dominate regional politics but are carried on independently of the cold war. These conflicts threaten to produce inter-

<sup>10</sup> This is the central thesis of President Johnson's interview, published in the Russian-language magazine *Amerika*, which is published by the U.S. Information Agency and distributed in the Soviet Union by an official Soviet agency, Soyuzpechat. For text see N.Y. Times, Sept. 28, 1966, p. 14, col. 2.

<sup>11</sup> Such an arrangement has been used with a certain success in the effort to halt or cut back the stockpile of fissionable material of weapons grade by the Soviet Union and the United States.

national violence, and their intensity is abetted by hostile propaganda. The conflicts between Israel and its Arab neighbors, between South Africa and the black African states, and between Indonesia and Malaysia (1963-1966) offer illustrations. Warfare is quite possible in a form that will draw the great powers in as allies opposed to one another, but the great powers are not the immediate antagonists.

Propaganda in this setting either calls for a holy war against the target state, defames the leadership of a foreign government, or calls for an uprising against a foreign government. Middle Eastern politics have made particular use of hostile propaganda for these purposes.

In this setting there is a basis for the *ad hoc* assertion of regulatory authority in the event that an international consensus can be mobilized. Hostile propaganda directed at South Africa or Rhodesia is compatible with global support for coercive measures designed to alter the policies of these regimes. Hostile propaganda can be a *sanction* or an international wrong, or neither, in this setting. It is neither if there is no consensus for or against the transmission of the hostile propaganda. That is, hostile propaganda is permissible in the absence of a consensus against it.

### *Type III: Tertiary Levels of Conflict*

These international conflicts are internal to single states but are arenas of intervention by the great powers. Because of the dangers of war described in connection with Type I, the conflicts in Type III tend to be outside established spheres of superpower influence and are located in "the third world."<sup>12</sup> Competitive intervention by economic and ideological means constitutes a prime characteristic of world politics at this stage. Propaganda plays a crucial role in advancing the policies of ideological intervention. With respect to conflict in the third world, there is not likely to be an international consensus available in relation to specific instances of civil strife of the sort that might serve as a basis for *ad hoc* authorization or condemnation administered on a supranational level (Type II). At the same time the common interests among the great powers are not strong enough to support ideological de-escalation through the voluntary regulation of propaganda at the national level (Type I). As a consequence, it seems hopeless and even undesirable to attempt to regulate propaganda vis-à-vis Type III conflicts. For this class of conflicts the effort at international regulation should concentrate on preventing overt military interventions of the kind that have devastated Vietnam since 1954. Nonmilitary intervention, whether by means of foreign aid or subversive propaganda, seems not to be susceptible to international regulation, partly because the conflict situation is not dangerous enough to the intervenors and partly because the incentives to intervene may often appear high. As such, struggles for influence in third-world countries accord with prevailing "rules of the game" operative in international affairs.

<sup>12</sup> For a general account of this sector of international political life, see CECIL V. CRABB, *THE ELEPHANTS AND THE GRASS: A STUDY OF NONALIGNMENT* (1965); PETER WORSLEY, *THE THIRD WORLD* (1964).

### B. The Lessons of Contextual Analysis

The objective of the foregoing overly schematic presentation of the main patterns of international conflict is to carry forward the argument that the *form* of international regulation must be clarified in relation to the extralegal international setting. Such a clarification indicates that certain forms of regulation are undesirable and infeasible, whereas other forms are desirable and feasible. The identification of desirable and feasible forms can be facilitated with respect to international propaganda by distinguishing between the main types of international conflict. In actuality, no additional rule of international law is needed to achieve desirable regulatory objectives. To the extent that hostile propaganda should be made subject to international regulation, this should be done by applying the existing rule prohibiting the threat to use force to resolve an international dispute as contained in article 2(4) of the Charter. Such an approach to regulation emphasizes the need for authoritative action at the international level whenever the object of regulation is as ambiguous as propaganda. At worst, propaganda is a form of indirect aggression, and its identification as such involves all the problems of subjective interpretation that prevent the formulation of clear rules of prohibition. Thus at the present stage of relative decentralization in international society it is essential that authoritative interpretation of vague legal rules—such as the prohibition upon a threat to use force or upon intervention—be based upon the formally declared finding of an overwhelming consensus of states, perhaps taking the form of a resolution of the General Assembly.

Additional regulation of hostile propaganda may be desirable, but it is unlikely to be attainable through either an international agreement (“treaty”) or the expression of an *ad hoc* consensus. To the extent that common interests are mutually served by reducing the flow of hostile propaganda in both directions, it might be possible and beneficial to proceed by means of graduated and reciprocal initiatives. It is this sort of evolution that might help restore harmony to the relations between the Soviet Union and the United States. Thus the further clarification of the national interest in expanding the extent of international cooperation among rival states might operate as a functional equivalent to direct regulation of hostile propaganda, relying on self-interested action voluntarily *and* reciprocally undertaken at the national level.

## IV

### A QUESTION OF PRINCIPLE: ON THE NEED FOR LEGISLATIVE CHANGE IN INTERNATIONAL SOCIETY

Propaganda plays a legislative role in international society, generating pressure for social change. Perhaps the most widespread support for the pursuit of legislative objectives by means of hostile propaganda exists in relation to the racial and colonial

practices of the regimes in control of the states in southern Africa.<sup>18</sup> Given the capacity of modern governments to suppress political opposition, and given the absence of any supranationally organized legislative organ, there are serious reasons to favor allowing certain forms of propaganda, even those that advocate war against a foreign government, seek to provoke domestic uprisings, or defame the political leadership in control of foreign societies.

The elimination of violence from international life is not an absolute value, nor is it separable from other questions at issue in international society. From the perspective of the African states south of the Sahara, the rectification of the racial and colonial situation in southern Africa takes precedence over the cause of war prevention. If war prevention demands a reduced capability to achieve their foreign policy goals with highest priority, then war prevention as a policy goal is in direct conflict with the elimination of racial discrimination and colonialism as policy goals, and a choice must be made. It is the refusal to confront the necessity for making this kind of choice that accounts for part of my criticism of prior advocates of the regulation of propaganda and, in turn, for my critical attitude toward all efforts to promote world order by overgeneralized commandments and prohibitions that are insufficiently correlated with the interests of states active in world affairs.

## V

### A TENTATIVE SENSE OF DIRECTION

The status of international propaganda is both troublesome and interesting because it seems to be related to mutually destructive conflict and to be intricately intertwined with the legislative programs of revisionist actors. Is there any way to reconcile the restraint of mutually destructive propaganda with the toleration of propaganda incidental to the realization of legislative objectives? Given the horizontal or decentralized structure of international society in the nuclear age, there is no very strong prospect of promoting legislative changes opposed by one or more major nuclear powers. The failure of the United States to support the anti-Soviet uprising in Hungary in 1956 is suggestive of the nuclear veto imposed upon the international advocacy of legislative policies. Pre-1956 American propaganda had created some impression that the United States would use its military power to assure the success of any substantial anticommunist uprising in eastern Europe, but, in the situation of choice, the dangers of war with the Soviet Union took precedence. As a consequence, many heroic individuals may have been deceived by misconstruing hostile propaganda. The United States has been more prudent since 1956 about the impressions it creates through hostile propaganda. Peaceful coexistence seems to be the basis of international relations between the superpowers *inter se*, and each

<sup>18</sup> I have outlined a legal argument in this setting: Falk, *The Legitimacy of Legislative Intervention by the United Nations*, in *ESSAYS ON INTERVENTION* 31 (Stanger ed. 1964).

has a mutual interest in avoiding the provocation of its adversary. In such circumstances there has been in recent years a significant *de facto* reduction in the transmission of subversive, warmongering, or defamatory propaganda between the Soviet Union and the United States. The content of the propaganda has rather been confined to criticism, perhaps extended to denunciation in periods of international tension.

At one end of the consensual spectrum, then, is the operation of a nuclear veto, whereas at the other end is virtual unanimity about the direction of social change in southern Africa. There is agreement broad enough to include both the United States and the Soviet Union that the regimes of Southern Rhodesia, South Africa, Angola, and Mozambique need to alter their policies drastically and that this alteration can come about only through a change of regime. As the regimes in control disallow domestic political opposition, the only prospect for change is by an externally abetted internal revolt or by force exerted from outside by a group of states or by international institutions. Propaganda is one component of "force" and is especially significant given the inability of the African states to organize any kind of external military operation. Under these circumstances there exists an overwhelming international consensus favoring a legislative solution and no way to register effectively the results of the consensus. At a minimum the transmission of propaganda must be reconciled with the international legal order. Otherwise the Westphalia system offers a rationale for oppressive domestic regimes repudiated by the international community rather than a framework supportive of common interests in peace.

The new states themselves have failed to articulate their double interest in non-intervention as a basic rule of international conduct and in a highly interventionary legislative solution for southern Africa. As a consequence, their simultaneous advocacy of both ends, corresponding to dual interests, appears confused and opportunistic. The importance of reinforcing norms of nonintervention during the period of nation-building in Africa and Asia is obvious, but no more so than is the drive to finish off colonialism and its racist by-products in southern Africa. This analysis has belabored this point to illustrate the approach taken in this essay to the problem of regulating international propaganda, which is properly viewed as one aspect of the over-all problem of regulating intervention in the internal affairs of foreign states. The essence of the approach is to relate the prospects for regulating to (1) the perceived interests of the major participants in international society and to (2) the basic decentralized structure of international society. As a consequence, the authority of law must reflect the perceived interests of the powerful group of states. In the context of intervention, then, there is legislative exception to the generalized principles expressed by articles 1, 2, 3, and 4 of the Draft Declaration on Rights and Duties of States. The conditions for granting a legislative exception are only met when the will of the international community is substantially united by a consensus that includes two-thirds of all states and the absence of opposition by either the United

States or the Soviet Union. In effect, the argument assumes that the will of the international community as expressed in a suitable fashion operates as the basic source of law in international affairs.<sup>14</sup> The partial validity of this contention has been accepted by at least three dissenting judges in the recent decision of the International Court of Justice in *The South West Africa Cases*.<sup>15</sup>

It is possible to summarize the jurisprudential underpinnings of the argument by saying that the Westphalia system for coordinating sovereign states has been qualified by a legislative exception—namely, that a requisite consensus of the international community can formulate demands for action and claims to act that take *legal* precedence over the will of the sovereign state. The quality of this consensus is as yet indefinite, but it would seem to require overwhelming support that includes the two nuclear superpowers. On the basis of this background it now seems possible to approach more realistically proposals to regulate international propaganda. International propaganda that is disseminated to promote a legislative objective that has been endorsed by a requisite consensus is ipso facto legal, even if the objective of the propaganda is to provoke its audience to take action otherwise illegal.

In conclusion, several propositions change:

(1) No general scheme of international regulation appears feasible or desirable at the present time as a consequence of political decentralization and ideological controversy.

(2) Hostile propaganda presently discharges certain legislative tasks in the international system.

(3) Hostile propaganda directed at the third world may restrict great-power conflict to mutually tolerable limits.

(4) International propaganda is a less serious instrument for human manipulation than is national propaganda and, to some extent, impairs the total control over media of communication exerted by national governments in relation to their own population.

(5) *De facto* reductions of hostile propaganda by informal arrangement may be useful if both sides wish to defuse.

<sup>14</sup> For a survey of the traditional considerations, see CLIVE PARRY, *THE SOURCES AND EVIDENCES OF INTERNATIONAL LAW* (1965); for an argument that the will of the international community is a basic source of international law, see C. WILFRED JENKS, *LAW, FREEDOM AND WELFARE* 83-101 (1963).

<sup>15</sup> Cf. the dissenting opinions of Judges Tanaka (Japan), Nervo (Mexico), and Mbanefo (Nigeria), *The South West Africa Cases*, July 18, 1966, [1966] I.C.J. Rep. — (page references unavailable).