THE CASE FOR LEGAL CONTROL OF “LIBERATION” PROPAGANDA

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The presentation of a case for control of so-called “liberation” propaganda requires, initially, an examination of the nature and legal status of this form of activity. With such a foundation, it will then be possible to evaluate such controls as already exist and proposals for additional controls. In order to keep this analysis within reasonable bounds, the inquiry has been restricted to propaganda emanating from governments, thus leaving aside similar efforts by private individuals and by groups below the level of national political groupings in single-party states such as the Soviet Union.

“Liberation” propaganda has as its object the arousal and abetment of tendencies toward an outbreak of revolutionary violence in another country. The purpose of such violence may be assumed to be the creation of radical domestic changes, such as a termination of colonial status, the elimination of legal racism, the ending of “neo-colonialism,” or simply the replacement of one governing elite by another. Liberation propaganda is thus connected most intimately with the manifested inability of the existing world community to legislate peaceful change. Since ruling elites in many instances are opposed to the coming of such change, a situation is created in which outside assistance appears to be necessary or desirable to effect the change. Again, since what might be termed rebellion of the mind must precede rebellion by arms, liberation propaganda occupies a vital position in the forcible production of domestic change.4

Liberation propaganda is a phenomenon of considerable antiquity. Writers are in general agreement that the first modern example of government-sponsored propaganda in favor of liberation movements was the decree voted by the French National Convention on November 19, 1792.2 Basically, however, it is our own century that has witnessed the rise of liberation propaganda to the status of a common tool in foreign policy. This development, representing deliberate mass production of treason,3 has been stimulated, on the one hand, by the relative stalemate in nuclear

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2 See Cecil V. Crabbs, Jr., American Foreign Policy in the Nuclear Age 338-57 (2d ed. 1963); Falk, Revolutionary Nations and the Quality of International Legal Order, in The Revolution in World Politics 310, 312 (Kaplan ed. 1963); Falk, Janus Tormented: The International Law of Internal War, in International Aspects of Civil Strife 185, 189 (Rosenau ed. 1964); Schwarzkopf, Responsibility of National States for Hostile Propaganda Campaigns, 29 Journalism Q. 194 (1952).

weaponry on the part of the two superpowers and, on the other hand, by the advances recorded in the sphere of mass communications, coupled with a considerable and effective increase in national efforts to create subservient organizations in other societies in this age of what Scott has termed "informal penetration."4

While any nation, large or small, possesses the ability to disseminate liberation propaganda, internal revolutionary situations have most often tended in recent years to become the battlefields in the Cold War. Liberation propaganda has therefore become identified, wrongly, with the conduct of that conflict. In reality, it is an integral part of covert political warfare.

Liberation propaganda falls under the more general heading of subversive propaganda, centering as it does on communications intended to bring about the transformation of an existing internal political order through revolutionary activities. Subversive propaganda may be subdivided into a number of categories such as "ordinary" subversive propaganda, irredentist propaganda, and social-revolutionary propaganda, with considerable overlapping among these being likely in most situations.6 Liberation propaganda appears to fit most comfortably into the social-revolutionary group. It represents, therefore, a mortal danger to any target government, for it seeks to dissolve the basic cement of loyalty that binds a citizen to his government and to his community. This very characteristic, on the other hand, creates the attraction which the utilization of this form of propaganda exerts on governments anxious to bring about the replacement of a governing elite in another state or territory.

If treason is presented as a higher, more desirable loyalty, if existing bonds among citizens are attacked by appeals emanating from outside sources, then any ruling elite would be hard put to point to a more direct and eroding attack on the foundations of its society.7 A government faced by outside attempts to foment civil strife, class war, and subversion will try to defend itself by all means available, not excluding war, to avoid its own extinction or radical transformation. It is this characteristic of liberation propaganda—its purpose of seeking to undermine the loyalty of citizens and thus the nation-state itself—and the consequent danger that retaliatory measures will unleash a larger conflict which underlie the argument that controls over such propaganda must be established among members of the community of sovereign states.

Space does not permit, unfortunately, a detailed examination of actual state practice in the sphere of liberation propaganda. It should be pointed out, however, that while Western commentators have been prone to emphasize Communist and Afro-Asian liberation propaganda activities, the fact is that most major nations, including

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4 Id. at 133.
5 See Lauterpacht’s pioneer study, Revolutionary Propaganda by Governments, 13 TRANSAC. GROT. SOC’y 143 (1928).
6 Whittington & Larson 83-95 passim.
the United States, have made use of the device in the pursuit of national policies, particularly after the Second World War. On the other hand, the bulk of liberation propaganda has emanated from Communist states, with the Soviet Union and mainland China, the chief practitioners of this Machiavellian art.

The Russian attitude toward wars of liberation appears to be founded on two basic contentions: it is asserted that every colonial (and now "neocolonial") area acquired its status, by definition, as the result of specific acts of aggression on the part of the colonial or neocolonial power involved; in the second place, it is maintained that in direct consequence of that original aggression, no matter when undertaken, the area affected possesses a right of "retribution," that is, of resistance in the name of self-defense against the "aggressor." Regrettably, the Soviet interpretation of an inherent right to rise against a colonial government was buttressed by the adoption, in 1960, by the United Nations General Assembly of a "Declaration on the Granting of Independence to Colonial Countries and Peoples."12

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8 Consult the following on the subject of American policy and practice in the sphere of liberation propaganda: H. Bradford Westerfield, The Instruments of America's Foreign Policy 248-77 (1963); Hearings on the Nomination of John Foster Dulles, Secretary of State-Designate, Before the Senate Committee on Foreign Relations, 89th Cong., 1st Sess. 5-6 (1953); Wright, Subversive Intervention, 54 AM. J. INT'L L. 521 (1960); Whitton, "Subversive Propaganda" Considered, 55 id. at 120 (1961); and Khrushchev, On Peaceful Coexistence, 38 FOREIGN AFFAIRS 1, 6 (1960). See also W. P. Davison, International Political Communication (1965), covering both sides of the Iron Curtain.


11 See the lucid analysis in Ginsburgs, supra note 9, at 919-33.

The Russian view is, furthermore, that support should be extended to rebellious colonial populations by the members of the Socialist bloc. But such support should always be given only within the "limits of acceptable risks," that is, without running into the danger of a major military conflict with the "aggressor state." On the other hand, no corresponding Western right to "export counterrevolution" is granted in the Soviet doctrine. In other words, the Western states should not support any party in an internal or local war which opposes the group supported by socialist states.13

As far as the duty of nonintervention is concerned, the usual Communist formulation has always deviated widely from the actual and necessary practice of states in their international relations. (It should be pointed out, parenthetically, that the Socialist myopia in this respect has been shared frequently by Latin American states.) Typically, "any direct or indirect intervention under any pretext in the internal or external affairs of another state" is alleged to be forbidden under the generally accepted norms of international law.14 But such a formulation cannot be accepted as realistic. States are bound to be concerned about and to attempt to influence policies of other states, and unless a given country could somehow manage to live in isolation, to do otherwise would not even be considered to be desirable. No rule of international law has ever denied the right of a sovereign state to try to affect the external policies of other states. All that has been attempted has been the development of rules designed to assure that such activities do not interfere with the equality under law of all independent states.

The best guide to current Chinese Communist attitudes on subversion and subversive propaganda is the major doctrinal article by Marshal Lin Piao, Chinese Minister of Defense, that appeared in all major Chinese newspapers on September 3, 1965. Marshal Lin asserted that the United States "colossus" could be defeated on a piece-meal basis by the outbreak of "people's wars" in Africa, Asia, and Latin America, and that nuclear retaliation would be prevented by American fears of the resulting international condemnation of nuclear war. Marshal Lin then contended that the Maoist theory of revolutionary conflict—the use of rural bases as the points from which urban centers held by an enemy should be attacked—should be adopted as the basic global strategy through which world Communism could be attained. In other words, "liberation wars" in Africa, Asia, and Latin America should be utilized to "encircle" the Western ("urban") centers of power. He continued:

[T]he greatest fear of U.S. imperialism is that people's wars will be launched in different parts of the world . . . . [I]t regards people's wars as a mortal danger . . . .

As for revolutionary wars waged by the oppressed nations and peoples, so far from opposing them, we invariably give them firm support and active aid. It has

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13 Consult Kulski, op. cit. supra note 10, at 393, on this interesting concept.
14 See the Czech proposal to the "Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation Among States" (A/5746), Mexico City, Nov. 16, 1964, as quoted in Friedmann, Intervention, Civil War, and the Role of International Law, 1965 PROCEEDINGS 67, 68.
been so in the past, it remains so in the present and, when we grow in strength as time goes on, we will give them still more support and aid in the future.18

The safe aspects claimed by Marshal Lin for wars of liberation would disappear, of course, in the event of a serious military confrontation with the United States in Vietnam. As General Maxwell Taylor has pointed out, such an invalidation of the Chinese theory would serve to demonstrate the correctness of the Soviet emphasis on peaceful coexistence and would convict the Chinese leadership of a most serious blunder.16

It becomes necessary now to inquire into the legal status of the activities described, with particular reference of course to liberation propaganda.

I

The Legal Status of Liberation Propaganda

One of the basic principles underlying all other norms of traditional international law is the equal claim to integrity of all sovereign states. If a given state, in time of peace, disseminates, through its own organs or agents, propaganda within another state, propaganda hostile to the government of that second state and indeed of a kind designed to incite subjects of that state to rebellion, then the integrity of the target state has been violated. Under such conditions, an international delinquency has taken place and the activities of the interfering state must be regarded as being in violation of international law: illegal intervention has been committed.17

It is, of course, well known that no rule of international law “has ever ascribed anything like a sacred character to the constitution of any country. No rule of law . . . can be held to deprive a people of its right to change its form of government, whether by ballot or by bullet, nor does any existing rule maintain that such a change must be the handiwork of a majority in any nation.”18 The Charter of the United Nations recognizes these facts when its terms favor the “self-determination of peoples,” for this may take the form, among others, of rebellion to overthrow an unpopular government, to oust a colonial regime, or to unite separate political units.

If internal war comes to a country and is of a purely domestic nature and origin—that is, if there exists a provable absence of foreign interference in the struggle—and if the outcome of that conflict is at all in doubt, then the incumbent government cannot ask for outside assistance to quell the rebellion. The logic behind this rule is that, under the conditions outlined, the government cannot be regarded by outsiders

15 N.Y. Times, Sept. 4, 1965, p. 2, cols. 4, 6; the Times devoted its entire second page to a reprint of substantial portions of Marshal Lin’s Speech.
as speaking for the state—in fact, neither faction can be assumed then to speak for the state.¹⁹

If, on the other hand, internal war has been incited, fomented, aided, abetted, supported, or encouraged from across the national frontier of the afflicted state, then there appears to exist an undoubted right on the part of the government of the target state to request assistance from others. However—and this represents a delicate point of interpretation—it has been asserted that a state responding to such an appeal for assistance must limit its aid, whatever its nature might be, to the territorial limits of the requesting target state.²⁰

It should be kept in mind, moreover, that in the case of an internal war stimulated or aided from the outside by means of subversive propaganda or by other means, the propaganda in question is seldom, if ever, in modern times aimed at the promotion of a mere unorganized rising against the incumbent government. What is normally needed and wanted, in addition, is the recruitment of a “counter-elite” capable of controlling increasing proportions of the physical and organizational instruments of power. Furthermore, competing elements, encountered all too frequently in actuality, within this counter-elite must be coordinated so as to reduce frictions. And, last but not least, the supporting power must find a way by which the counter-elite, upon its successful seizure of control in the target state, can achieve not only legitimacy but also permanency. In every case, that elite must somehow convert itself into a majority or at the very least win the passive support and acceptance of the majority.²¹

Returning to the basic problem, namely, a rebellion supported from the outside, it is generally accepted that, before assistance can be lawfully granted to the requesting government of the target state, determination must be made in some manner as to the actual existence of outside intervention in the internal affairs of the requesting state. Obviously that determination cannot be left to the latter state. It must either be undertaken by the state whose aid has been requested or by a supranational agency, either universal or regional in scope. The determination thus arrived at would settle whether the requesting government was legally able to speak for its state and therefore able to request outside assistance.²²

A. Subversion in International Law

The diplomatic practice of large and small states over a period of more than 170 years has demonstrated conclusively that governmental subversive intervention in the

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²⁰ Id. at 123-24.

²¹ See the instructive treatment of this neglected subject in Blackstock, op. cit. supra note 7, at 158-66, 266-70.

²² Consult Deutsch, External Involvement in Internal War, in Internal War: Problems and Approaches 100 (Eckstein ed. 1964).
internal affairs of another sovereign state was regarded as a violation of the norms of customary international law. In addition, resolutions adopted by various international organs may be taken to represent a consensus of the community of nations as to desired elements in rules of customary law, even though those rules might not yet have crystallized from the status of usages to binding, obligatory custom. This is a controversial area of legal thinking. The present writer cannot accept, to name one instance, the views of Goodrich, who, while admitting that the passage of a resolution in the General Assembly of the United Nations does not by itself create international law, nevertheless maintains that such resolutions are evidence of customary international law. Particularly does the present writer reject the contention that when such resolutions are sufficiently clear, universal, and sustained over a long period of time, they might become “almost incontestable evidence” to establish a rule of customary law.

Similar doubts are maintained by this writer about Whitton and Larson’s characterization of such resolutions as “remarkably probative” of rules of customary international law. Nevertheless, Spykman succumbed, perhaps, to a desire to overplay his argument when he wrote, years ago, that “resolutions, particularly Pan American resolutions, are usually melodious in tone and indicative of a fine appreciation of literary style. Collected together, they make a charming exhibit and show what artistic results can flow from co-operation between legal and poetic minds.”

It is true that some writers in international law accept norms, principles, and rights, all based on resolutions passed in international organizations. Yet the vital element of intent appears to be lacking in such resolutions, intent to create legally binding obligations accepted as such by the very states voting for the resolutions. The correct status of such instruments has been described admirably by the late Mrs. Eleanor Roosevelt, then delegate from the United States, in connection with the oft-cited “Universal Declaration of Human Rights” of 1948:

In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by a formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.

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23 For example, see, e.g., Whitton & Larson 19, 97-99.
24 Leland M. Goodrich, The United Nations 206-10, 282-91 (1959); see Ginsburgs, supra note 9, at 941 n.57.
25 Whitton & Larson 99-100.
26 Nicholas J. Spykman, America’s Strategy in World Politics 253 (1942).
27 Such as, for instance, Wright’s acceptance of “recognized human rights of freedom of opinion and freedom of communication across national boundaries,” based on art. 19 of the Universal Declaration of Human Rights: see Wright, Subversive Intervention, 54 Am. J. Int'l L. 521, 530 (1960). L. John Martin, in his International Propaganda: Its Legal and Diplomatic Control 97 (1958), discusses the Declaration of Human Rights in the category of “General Treaties” said to be permissive of international propaganda, while recognizing that it was no more than a recommendation.
28 19 DEP’T State Bull. 751 (1948).
On the other hand, some publicists have gone so far afield from the traditional interpretation of international legal norm formation that they have characterized General Assembly resolutions as "a formal source, *per se*, of binding international law principles."^29^ In essence, their approach has been that one should ask, in "experiential terms," whether an alleged principle was actually observed as such by both main legal systems found in the world today, regardless of whether that principle was created by the older formal sources of international law. Such an approach ignores the fact that even though transgression of a rule might occur with such frequency that the rule might be regarded as obsolescent, the existence of the rule could not be doubted.^30^ The solution, it is believed, would then be to revitalize the rule if it were to be preserved and maintained. And this might well be done within the framework of existing legal orders, not through mechanisms in part created by and certainly guided by the political demands of possibly quite ephemeral international situations.

It is indeed difficult for a believer in the traditional structure of the law of nations to agree with the "modern" point of view which holds that there has emerged "in fact a new cold-war international law ... that corresponds, more or less accurately, to the actual state of Soviet-Western legal relations—a new 'inter-bloc' international law that, in some or many respects, may exist separately and distinct from (though not necessarily in opposition to) 'classical' international law."^31^ No one can doubt that the existing rules of international law are not immutable or that the law can and is being adjusted to changing needs of the family of nations. But the claim for an "inter-bloc" law basically represents a claim of legal status for political moves quite distinct from, and in some instances in violation of, generally accepted rules of the law of nations.^32^

A large volume of treaties, bilateral or regional in scope, deals with the subject of subversive propaganda from the point of view of curbing or prohibiting altogether the practices involved. While a number of such agreements date back to the era of the French Revolution, and while others are found at various dates during the nineteenth century, the bulk of the conventions in question have originated in the twentieth century.

Russia in particular became a signatory to agreements banning official hostile propaganda, beginning with the abortive treaty of Brest-Litovsk in March 1918.^33^ On a regional level, a number of inter-American instruments include prohibitions on intervention which, if interpreted properly, would appear to include prohibitions on governmental propaganda activities. The often cited "Draft Code of Offences Against

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^30^ See Whitton, supra note 8, at 120-21 on this point.


^33^ For the 1918 treaty, see 1 S oviet Treaty Series 1917-1928, at 4 (Shapiro ed. 1950); for details on post-World War I Russian agreements, consult Martin, *op. cit.* supra note 27, at 89-108.
the Peace and Security of Mankind," as compiled by the International Law Com-
mission, contained prohibitions on subversive intervention and on the incitement
to civil strife in another state, both in the original version of 1951 and in the latest
revised version of 1954.\(^3\) Even though nothing more has been done about converting
that draft code into a binding treaty, it may be taken to represent the nearest thing
yet achieved to the sort of general consensus on subversive intervention which all
writers and much state practice assert to exist in customary international law. (Other
treaties dealing with subversive propaganda will be discussed below.)

Without entering into the theoretical controversy centering on the position and
importance of "general principles of law recognized by civilized nations" as a proper
source of the rules of international law,\(^3\) it can be maintained reasonably that the
domestic law counterpart of the illegality of subversive propaganda can be found
in the very generally encountered regulations dealing with the use of words to cause
or to incite harm or injury. Since a commonly desired result of subversive propa-
ganda, in particular of liberation propaganda, is violence against persons, the
commonly found domestic laws prohibiting the use of words to cause murder, physical
harm, and similar results can be applied to international subversive propaganda
in this connection.\(^3\)

Judicial decisions, as subsidiary evidences of norms of the law, deal but sparingly
with the subject of subversive intervention. One has to rely primarily on the
Nuremberg judgments in this connection, and while not all aspects of those judg-
ments are above justified criticism,\(^3\) it can be maintained that they treated subversive
propaganda as illegal, both as a warwarming device and in the aspect of subversive
"fifth-column" activities specifically mentioned in the indictment at the trials in ques-
tion.

While the writings of publicists cannot be regarded as sources of rules of interna-
tional law (at least not in modern times), to the undoubted chagrin of some members
of the group, these scholarly works may be used as subsidiary evidence of the existence
of such rules. The overwhelming bulk of all writers in international law, past and
present, concur in a rare demonstration of agreement that it is illegal for a state to
undertake any act of subversive intervention.\(^3\) And to the extent that the frequently

\(^{34}\) Text of the revised draft, with commentary, reprinted in 49 Am. J. Int'l L. Supp. 19-23 (1955); see also von Glahn, op. cit. supra note 18, at 714-16, particularly on the negative views adopted by the United States on this matter.


\(^{30}\) Whitton & Larson 103; see id. at 71-75 for examples.

\(^{37}\) Consult von Glahn, op. cit. supra note 18, at 707-08 nn. 22-25, and the literature there cited, for examples of the subsequent criticisms of the trials.

\(^{35}\) See instructive listing in Whitton & Larson 96; see also Martin, op. cit. supra note 27, at 57, 215 n.31; 2 L. Oppenheim, INTERNATIONAL LAW: A TREATISE § 162a (7th ed. Lauterpacht, 1952); Ellery C. Stowell, Intervention in International Law 378 (1921); Ann V. Thomas & A. J. Thomas, Jr., NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS 276 (1956); Friedmann, supra note 14,
encountered overlapping between subversive and warmongering propaganda occurs, other authorities can be cited in support of the illegal character of the practice.  

This well-nigh universal unanimity among writers has been opposed, as might be expected, by a few dissenters and doubters. To no one's surprise, Communist sources, while nominally opposed to all forms of subversive intervention, somehow find a loophole excusing Socialist intervention. Thus, in addition to the views already reported above, one Soviet source ingeniously suggested as early as 1952 that "the principle of non-intervention is not a definite and forever-established principle; it might have a progressive or a reactionary meaning." The "progressive meaning" obviously would apply if the doctrine of nonintervention were to be applied against practices followed by a non-Socialist state.

Among other doubters, Rosenau observed pessimistically, in the presumed interest of realism, that

Internal wars are ... too explosive for policy-makers to be guided by legal rather than political considerations in their reactions to them. Law takes precedence when vital national interests are not challenged or when it coincides with such interests. ... In such situations [internal wars, civil wars], consequently, the law loses force and the distinction between intervention and nonintervention tends to be obliterated.

And Loewenstein came to the conclusion that nonintervention represented a principle of international law which was honored more by breach than by observance. He suggested that the American Society of International Law establish "a study group to reconsider the continued validity and value of such a rule."

B. Intervention by International Organizations

A few comments on the subject of intervention on the part of international organizations appear to be indicated at this point. It is suggested that such a concept should not be concerned with United Nations peacekeeping forces or with similar direct interventionary practices—these are too remote from the subject under consideration. But is it possible or reasonable to envision "subversive intervention," say through General Assembly debates or resolutions, by which an international agency, intentionally or otherwise, might actually promote or stimulate internal strife, or even a "war of liberation," in a given state? Certainly there is available copious docu-
mentation for the charge that both the Soviet Union and Communist China have made frequent use, in the furtherance of subversion in other states, of what transpired in the General Assembly or of what was approved textually in resolutions. In such instances, the international organization itself was innocent of subversion and only the "users" of the "product" could be charged with subversive intervention.

Yet could not the organization itself, even through the mere reporting of its debates, be guilty somehow of subversive acts? Wright, in analyzing this problem, arrived at several conclusions. He believed that, in the case of a resolution, determination of its interventionary nature required a two-thirds vote in the General Assembly and concurrence of the great powers in the Security Council. On the other hand, placement of a matter on the agenda of the Assembly and discussion of that matter did not constitute intervention, in the view of the General Assembly itself. Wright, furthermore, was obviously correct when he stated that the truth of a charge of intervention in domestic matters, under article 2, paragraph 7, of the Charter could not be determined until discussion had actually taken place and an analysis of a proposed resolution had been accomplished thereby.

It appears reasonable to assume, on the other hand, that a resolution criticizing the conduct of a particular state, calling upon it to change its policy, or calling upon other states to act against it, although not 'intervention by the United Nations' as that term would be understood in international law, may be forbidden by Article 2, paragraph 7, in case the state against which the resolution is directed has not violated an international obligation and consequently is acting within its domestic jurisdiction.

The present writer believes that since article 10 of the Charter establishes the right of the General Assembly to discuss any question or matter within the scope of the Charter, it would be possible to envision situations in which mere discussion, accompanied by opposing arguments, of a given matter might actually (upon being reported to the population of a given state) represent subversive propaganda, even though such had not been the intention of the General Assembly.

It is thus possible to speak of intervention by international organizations and to regard, from the point of view of legitimate governments, such intervention as subversive and hence to be met by countermeasures by the affected government, just as if the subversive intervention had been caused by a specific foreign state, its agencies, or its agents.

44 Id. at 106-07.
45 Id. at 108.
46 Id. at 106-07.
47 See also Scott, op. cit. supra note 3, at 153, on this point, as well as Karabus, United Nations Activities in the Congo, 1961 Proceedings 30.
Almost four decades ago, Hersch Lauterpacht, in one of the earliest studies of subversive propaganda and its relationships to the law of nations, penned this thoughtful and prophetic paragraph:

But the menaced state is to a considerable degree powerless against revolutionary propaganda generated abroad, possibly spread from the air by means of publications or broadcast by wireless, inciting its population to armed revolt and its troops to rebellion; against revolutionary organizations formed abroad with the view to assisting an actual or impending revolt in their mother country; against moneys being subscribed or lent, or other assistance given, for such purposes. What protection, if any, from such acts falling short of hostile expeditions does international law afford, and what duties, if any, does it impose upon the state from whose territory such acts originate? An answer to the question posed by the eminent Briton is not easily supplied, for thus far no real controls over international propaganda disseminated by governments have been included in the body of generally accepted rules of international law. While there are numerous rules, they lack general acceptance and in all too many instances lack application among the few parties to relevant treaties. Above all, there is no universal convention regulating subversive propaganda.

A. General Treaty Law on Subversive Propaganda

The League of Nations did not produce a general treaty controlling international propaganda. Its Assembly studied the subject in connection with the preparation of the Preliminary Draft of the "General Convention to Improve the Means of Preventing War," in May 1931. But while the Assembly was moved to declare that under certain conditions "aggressive propaganda against a foreign Power may in certain circumstances, constitute a veritable threat to the world," this referred obviously to warmongering propaganda rather than to subversion. Similarly, the Legal Committee of the ill-starred League of Nations Conference for the Reduction and Limitation of Armaments, in 1933, recommended only the prohibition of "war propaganda." The United Nations Charter does not fully qualify as a general treaty controlling subversive propaganda. The relevant portions of this instrument (article 2, paragraphs 3 and 4, and articles 39 and 51) by their wording as well as by their context appear to make it quite clear that "force" means "armed force" and that other unfriendly or even hostile acts, such as diplomatic pressure, economic warfare, propa-
ganda, and subversion, are not covered by the Charter as far as its literal meaning is concerned.\textsuperscript{53}

On the other hand, a number of attempts have been made to include subversive intervention under a category labelled “indirect aggression,” the argument then proceeding to a justification of state or United Nations action to put an end to such aggression. Thus President Eisenhower stated in a radio address on July 15, 1958, in connection with the United States intervention in the Lebanon, that the United States did possess a right of intervention in accordance with article 51 of the Charter in a case of “indirect aggression.” After referring to related resolutions adopted by the General Assembly in 1949 and 1950 (discussed below), he defined the indirect aggression at hand as attempts “‘under the cover of a fomented civil strife’ to ‘put into domestic control those whose real loyalty is to the aggressor.’”\textsuperscript{54} The late Secretary of State John Foster Dulles, in a speech on March 8, 1955,\textsuperscript{55} and the late President Herbert Hoover, testifying at Charter Revision Hearings on April 21, 1955,\textsuperscript{56} before a Subcommittee of the Senate Foreign Relations Committee, maintained that “act of aggression” should cover “indirect aggression” through fifth columns, foreign-organized conspiracies, infiltration, and ideological propaganda.\textsuperscript{57} But, in the meaning of traditional general international law, “aggression” has always been utilized with reference only to the use of, or the threat to use, armed force.

The General Assembly had declared in its Resolution 380 (V) of November 17, 1950, that “fomenting civil strife in the interest of a foreign Power” constituted aggression. It should be noted, however, that this was done through a resolution—and hence lacked legally binding force and could not be viewed as an intent to amend the clearly contrary meaning of the words of the Charter—and that the General Assembly (and also the International Law Commission) has never been able to agree on a generally acceptable definition of aggression. It must be assumed that the Charter does not apply to internal wars, no matter how generated, unless such a war exceeds its domestic characteristics by constituting a threat to the peace.

Two draft general treaties have to be mentioned in connection with the search for general treaty law applicable to liberation (subversive) propaganda. Even though neither instrument has been adopted since its formulation, guidelines for possible future general treaty law may be found therein. The “Draft Declaration on Rights and Duties of States,” developed by the United Nations International Law Com-

\textsuperscript{53} To this extent Wright is absolutely correct in *The Legality of Intervention Under the United Nations Charter*, 1957 PROCEEDINGS 79, and also in *Subversive Intervention*, 54 AM. J. INT’L L. 521, at 529 (1960).


\textsuperscript{55} 32 DEPT. STATE BULL. 460 (1955).


mission in 1948 as the model of an eventual convention,\textsuperscript{58} prohibited in article 3 intervention in the internal or external affairs of another state. Kelsen, viewing intervention as dictatorial in nature (i.e., the threat or use of force) regarded the prohibition as redundant, since force was declared to be illegal in article 9 of the draft declaration.\textsuperscript{59} If, on the other hand, “intervention” were to be regarded as covering additional other methods of interference, then article 3 would, of course, make sense. But if it were to be incorporated in a future convention, the meaning of “intervention” would have to be defined explicitly. Article 4 of the draft declaration (revised) asserted 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.”\textsuperscript{60} These provisions are self-explanatory, although a closer definition of state responsibility, relating to state-controlled agencies or political groupings, might have been added.

The second instrument was the “Draft Code of Offences against the Peace and Security of Mankind,” developed by the International Law Commission in 1951 and revised slightly in 1954.\textsuperscript{61} Article 2(5) spelled out the prohibition on subversive intervention as an offense against the peace and security of mankind, namely “the undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.”\textsuperscript{62} This provision provided a somewhat more satisfactory definition of the prohibited act than did the corresponding section of the 1949 draft declaration.

One particular effort to achieve a general treaty for the control of propaganda should be mentioned briefly at this point. In September 1936, work on the “Convention Concerning the Use of Broadcasting in the Cause of Peace” was completed under the auspices of the League of Nations. A total of twenty-two states eventually became parties to the agreement, thirteen by ratification and nine by subsequent accession. The instrument, which came into effect on April 2, 1938, constrained the parties (article 2) to ensure that “their transmissions do not constitute an incitement to war, or to acts likely to lead to war.” The current status of this 1936 instrument is in doubt. At the time of its conclusion, the future members of the Axis in the Second World War did not sign the treaty. The United States refused to become a party, on the grounds that the American government could not exercise the neces-

\textsuperscript{59} Kelsen, supra note 58, at 268.
\textsuperscript{60} Id. at 128.
sary controls over its broadcasting stations—and also that few transmissions to other
countries were being made.

B. Regional Treaty Law on Subversive Propaganda

In contrast to the absence of general international treaty law governing sub-
versive and/or liberation propaganda, a considerable number of regional (particularly
Western Hemisphere) instruments prohibit intervention in terms broad enough to
include the propaganda activities under consideration. It is interesting to note how
the concept of intervention, in various guises, came to be reflected in these agree-
ments.

One of the earliest instruments, the 1928 Convention on the Rights and Duties of
States in the Event of Civil Strife (ratified by the United States in 1931), dealt ex-
clusively with military assistance (through personnel and supplies) to rebel groups.\(^6\)
The Saavedra Lamas Anti-War Treaty on Non-Aggression and Conciliation of
1933, ratified by the United States, prohibited “intervention either diplomatic or
armed” (subject to obligations assumed through other regional agreements).\(^6\)
The 1933 Montevideo Convention on Rights and Duties of States (ratified by the United
States but with a reservation) provided that “no state has the right to intervene in
the internal or external affairs of another.”\(^5\) (Note the intrusion of this unrealistic
phrasing at this point in the historical development.)

In 1936, the Buenos Aires Additional Protocol Relative to Non-Intervention held
to be “inadmissible the intervention of any one of them, directly or indirectly, and
for whatever reason, in the internal or external affairs of any other of the parties,”\(^6\)
while the 1936 Buenos Aires Convention to Coördinate, Extend and Assure the Ful-
fillment of the Existing Treaties between the American States, ratified by the United
States, served to reaffirm prior agreements on the subject of nonintervention.\(^6\)
At the same time, the Declaration of Principles of Inter-American Solidarity and Coopera-
tion (Buenos Aires), ratified by the United States, asserted that “intervention by one
state in the internal or external affairs of another state is condemned.” And the same
condemnation appeared again, two years later, in the 1938 “Declaration of Lima.”

The Montevideo and Buenos Aires instruments were then reaffirmed in the Act
of Chapultepec in 1945, signed by the United States. The 1947 Inter-American
Treaty of Reciprocal Assistance, Rio de Janeiro, had been drafted in a form which
related it directly and by intent to articles 52-54 of the United Nations Charter. In
article 3 of the Rio instrument, provisions had been made for regional collective
action in the case of armed attack on any one of the parties, while article 6 called

\(^6\) 22 Am. J. Int’l L. Supp. 159-60 (art. 1) (1928).
\(^6\) Id. at 75, 76 (art. 8).
\(^6\) Id. at 59 (art. 1).
for collective action in the case of any aggression, other than an armed attack, affecting the territory or sovereignty of any American state.\textsuperscript{68}

In 1948, the Charter of the Organization of American States (OAS), signed at Bogota and ratified by the United States, provided in article 15 that

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.\textsuperscript{69}

This exemplary prohibition was wisely qualified, however, in article 19 of the treaty, which exempted from its application "measures adopted for the maintenance of peace and security in accordance with existing treaties."

It would appear reasonable to conclude that at least under the terms of the Rio Treaty and of the OAS Charter, subversive propaganda aimed at the territorial integrity or at the sovereignty of any of the American states would have to be classified as forbidden, and hence would give rise to a legitimate right to ask for assistance, on the part of the target state, once the foreign origin of the propaganda had been established by those to whom the appeal for help had been addressed.

The Tenth Inter-American Conference, held in 1954 at Caracas, adopted a "Declaration of Solidarity for the Preservation of the Political Integrity of American States Against the Intervention of International Communism."\textsuperscript{70} This interesting document, initiated by the United States and supported, ironically enough, by Cuba, was adopted by a vote of 17 to 1, with Argentina and Mexico abstaining; the lone dissenting vote was cast by Guatemala. The Declaration condemned the activities of the international Communist movement as intervention in American affairs, affirmed the determination of the American states to take measures for the protection of their political independence against such intervention, and asserted:

That the domination or control of the political institutions of any American state by the international communist movement ... would constitute a threat to the sovereignty and political independence of the American states, endangering the peace of America, and would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties.\textsuperscript{71}

It should be remembered, in connection with the Caracas Declaration, that while such instruments do not require ratification by the signatories, and therefore do not correspond to treaties in the orthodox meaning of the term, Latin American states have


\textsuperscript{69} 46 Am. J. Int'l L. Supp. 43, 46 (1952).

\textsuperscript{70} Text in 48 Am. J. Int'l L. Supp. 123 (1954); consult also Fenwick, Intervention—at the Caracas Conference, 48 Am. J. Int'l L. 457 (1954), and especially Fenwick, Proposed Control Over the Radio as an Inter-American Duty in Cases of Civil Strife, id. at 289.

traditionally regarded their inter-American declarations as creative of binding legal obligations. It is, therefore, permissible to view Latin American declarations as a source of regional international law.

In 1959, the Fifth Meeting of Consultation of Ministers of Foreign Affairs, in the Declaration of Santiago, Chile, reaffirmed earlier American resolutions aimed at international ideologies and again declared the existence of antidemocratic regimes to constitute a danger to the Western Hemisphere. Similar views were voiced at the 1960 Meeting of Foreign Ministers at San José, Costa Rica.

In pursuit of the policies laid down first at the Caracas meeting, the Organ of Consultation of the OAS, meeting at Punta del Este in January 1962, approved a resolution calling on the American states to "strengthen their capacity to counteract threats or acts of aggression, subversion, or other dangers to peace and security resulting from the continued intervention in this hemisphere of Sino-Soviet powers." This document, coupled with the earlier agreements, supplied the basis for Latin-American support of the United States in the Cuban missile crisis of October 1962.

The discussion of regional inter-American instruments dealing with subversion intervention cannot be concluded without mentioning the well-known Resolution passed in the United States House of Representatives on September 20, 1965, by a vote of 312 to 53. This resolution, while it expressed only "the sense of the House" and thus lacked any force in law, nevertheless caused a vigorous and critical reaction among the Latin American states. After reciting the threats and dangers arising in the Western Hemisphere out of "subversive forces known as international Communism," and asserting that such threats would endanger the peace and safety of the United States, the resolution concluded with the following statement:

1. Any such subversive domination or threat of it violates the principles of the Monroe Doctrine, and of collective security as set forth in the acts and resolutions heretofore adopted by the American Republics; and
2. In any such situation any one or more of the high contracting parties to the Inter-American Treaty of Reciprocal Assistance may, in the exercise of individual or collective self-defense, which could go so far as to resort to armed force, and in accordance with the declarations and principles above stated, take steps to forestall or combat intervention, domination, control, and colonization in whatever form, by the subversive forces known as international Communism and its agencies in the Western Hemisphere.

The protests against the resolution centered on its unilateral aspects, on the fact that the normally temporary character of any counter-intervention acts had not been

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72 See Crane, supra note 9, at 21; see also Travis, Collective Intervention by the Organization of American States, 1957 PROCEEDINGS 100.
stressed, and on the origin of the resolution in the legislative rather than in the executive branch of the United States government.

C. Particular (Bilateral) Treaty Controls of Subversive Propaganda

A rather large number of bilateral treaties concluded mostly during the past fifty or so years have included provisions for the limitation of international propaganda. A detailed examination of these instruments must be considered to be beyond the scope of this investigation, nor can the instruments in question be considered as creating new rules of international law.78

D. “Resolutions” on Subversive Propaganda

Reference has been made earlier to resolutions adopted by international organizations. Best known among them are (1) the famous United Nations General Assembly Resolution of November 3, 1947 [Resolution 110(II)], adopted unanimously, which condemned “all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression”;79 (2) the General Assembly Resolution on the Essentials of Peace [Resolution 290(IV)], adopted on December 1, 1949, by a vote of 53 to 5, with one abstention, which called on all nations “to refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any state, or at fomenting civil strife and subverting the will of the people in any State”;80 and (3) the Assembly Resolution on “Peace Through Deeds,” adopted by a vote of 50 to 5 on November 17, 1950,81 in which the General Assembly condemned intervention and denounced open aggression as well as the fomenting of civil war as “the gravest of all crimes against peace and security throughout the world.” It should be noted that in these instances the General Assembly studiously avoided use of the terms “outlaw” or “prohibit,” as far as the practices in question were concerned. Basically the consensus achieved in each case represented a moral preaching, not a legally binding obligation for the membership of the United Nations. Similarly, the 1948 United Nations Conference on Freedom of Information and of the Press, in its Resolution II, which was adopted by majority vote, condemned all propaganda designed or likely to provoke any threat to the peace, breach of the peace, or act of aggression, as well as all distortions or falsifications of news through either private or government channels.82

78 An extensive listing of treaties may be found in Martin, op. cit. supra note 27, at 89-96.
81 N.Y. Times, Nov. 18, 1950, p. 1, col. 5.
More recently, the General Assembly, by a vote of 109 to 0 (with one abstention—the United Kingdom), adopted on December 21, 1965, a resolution condemning all forms of intervention in other states, including subversion and terrorism. The document went on to state that no country was to “organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.”\(^{83}\) Later in the resolution was to be found a reaffirmation of the right of any state to choose its political, economic, social, and cultural systems without outside interference.

On the same day, the General Assembly adopted, by a vote of 104 to 0 (with one abstention—Mexico—later changed to an affirmative vote), a convention to be submitted to the members for ratification, on the complete elimination of racial discrimination and colonialism in all its forms and manifestations. No clue was supplied as to how the provisions of such an instrument would be reconciled with the non-intervention resolution, with its asserted national freedom of choice relative to internal systems, or how the treaty related to the Charter provisions concerning non-intervention in domestic affairs.\(^{84}\) It is presumed that dissenting states would not ratify the treaty, but essentially a conflict of General Assembly policies appears to have been recorded.

While resolutions adopted in international organizations are denied here the status of treaties, it must be admitted that the resolutions on intervention adopted on occasion by the General Assembly have served at times as determinants for subsequent United Nations actions, as Sohn has pointed out with references to actual instances.\(^{85}\) Similarly, resolutions have played an important role in the operations of the OAS with respect to various forms of subversive intervention. Thus Resolution XXXII adopted at the founding conference of the OAS at Bogota in 1948 asserted that, “by its anti-democratic nature and its interventionist tendency, the political activities of international communism or of any other totalitarian doctrine is [sic] incompatible with the concept of American freedom, which rests upon two undeniable postulates: the dignity of man as an individual, and the sovereignty of the nation as a State.”\(^{86}\) To a similar effect are the resolutions mentioned earlier in connection with the 1954 Caracas and the 1962 Punta del Este meetings of the OAS.\(^{87}\)

E. Municipal Law and Subversive Propaganda

While it is correct to state that many countries have enacted domestic legislation prohibiting or limiting propaganda aimed at other states and their officials and

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agents, this bulky mass of regulatory measures does not really apply to the subject here under consideration. In the first place, municipal laws on the dissemination of such propaganda basically apply only to private agencies and to individuals disseminating propaganda from the national territory of the legislating state. This is not always true, to be sure, for the Russian “Peace Defense Act” of March 12, 1951, and the Czechoslovak “Act on the Protection of Peace,” of December 20, 1950, are worded in such a way as to apply to anyone guilty of the offenses listed therein, regardless of where he might be located. The normal limitation on the territorial sovereignty of the legislating state is, of course, legally correct: the authority of the latter does not ordinarily extend beyond its own frontiers (vessels being a well-known exemption). On the other hand, the target state of subversive propaganda might claim a right of prosecution for acts committed beyond its own territory under the doctrine laid down long ago by the Institute of International Law, that “every state has the right to punish acts committed outside its territory, even by foreigners, when the act constitutes . . . an attempt against its security.” This assumes, naturally, an ability to “lay hands” on the offending parties, who, in the scope of our inquiry, would be government officials!

In the second place, and more important, one basic fact nullifies for practical purposes the value of all municipal law regulating subversive propaganda, namely that the propaganda discussed here is officially sponsored, governmentally disseminated propaganda. It must be assumed that the authorities in any state engaged in subversive propaganda activities will place themselves above the laws promulgated by themselves, either without explanation to anyone or under the plea of urgent national interest.

F. Governmental Responsibility for Subversive Propaganda

The presence or absence of municipal law intended to regulate propaganda dissemination is quite unimportant from the point of view of this inquiry for still another reason, one that relates directly to broadcasting (and now to telecasting, too). Normally a radio or television station must be licensed by an agency of the national government in whose territory operations are undertaken—and, within broad limits, this also applies in most instances to government-owned installations beyond the level, say, of intraservice communications in the armed forces. The licenses in question presumably relate to the “public service” performed by the communications

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89 Id. at 34-35.
90 1 ANNAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 281 (1879-1880); see also 29 AM. J. INT'L L. SUPP. II, at 543 (1935), and art. 3 of the Draft Convention: “A State has jurisdiction with respect to any crime committed in whole or in part within its territory. This jurisdiction extends to . . . (b) Any attempts outside its territory to commit a crime in whole or in part within its territory.” Id. at 480.
91 HYDE, op. cit. supra note 19, §§ 192-193F, supplies an excellent summary of controls to the end of the Second World War; consult also the suggestive essay by Neuner, Broadcasts from Foreign Countries—Conflict of Laws Problems, 33 GEO. L.J. 401-17 (1945).
medium involved, and as a result a public interest of some magnitude is created. Hence the state granting the operating permission, retaining normally a right of control or supervision, can be held responsible internationally for the abuse of the public service function through the dissemination of subversive propaganda.\(^{92}\)

Since the Communist states have, \textit{on the surface} at least, accepted as legal norms the existing prohibitory rules on intervention, they could be held responsible for interventionary propaganda emanating from their territories.\(^{93}\) Since, however, international law is demonstrably weak with respect to sanctions in this sphere, it now becomes necessary to deal with the problem of improving enforcement of the rules governing subversive intervention.

III

\textbf{POSSIBLE LEGAL CONTROLS OF LIBERATION (SUBVERSIVE) PROPAGANDA}

It is quite evident that the practices of states have not conformed to the traditional rules governing intervention. Not only has subversive intervention, including the variety termed liberation propaganda, flourished, but counter-intervention, including the use of propaganda, has become a part of modern international relations. This situation, blamed by some on the increasing interdependence as well as on the penetrability of hitherto (at least in theory) impenetrable state sovereignty,\(^{94}\) has led to an attitude of relative despair on the part of publicists and statesmen in many parts of the world.

It is, of course, true that, in the words of Corbett, "law cannot be built upon a heedless sacrifice of reality,"\(^{95}\) and that "legal obligations that exist but cannot be enforced are ghosts that are seen in the law but that are elusive to the grasp."\(^{96}\) Since existing norms on nonintervention appear inadequate and have been violated on a recurring basis in recent decades, it has been suggested by some writers that perhaps the traditional general rules should be repudiated in favor of a substitute group of new "horizontal norms," that is, norms based on patterns of behavior accepted by national actors as obligatory.\(^{97}\)

Three points are advanced in answer to such suggestions. In the first place, in the pithy words of Whitton and Larson, "a rule of law should not lightly be con-

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\(^{93}\) See the compilation of relevant statements in Triska & Slusser, \textit{Treaties and Other Sources of Order in International Relations: The Soviet View}, 52 \textit{Am. J. Int'l L.} 699, 719 n.64 (1958).

\(^{94}\) Richard A. Falk, \textit{Law, Morality, and War in the Contemporary World} 12 (1965), and Scott, \textit{op. cit. supra} note 3, at 101.

\(^{95}\) Percy E. Corbett in his Translator's Preface to \textit{Charles De Visscher, Theory and Reality in Public International Law} at viii (1957).

\(^{96}\) Mr. Justice Holmes in \textit{The Western Maid}, 257 U.S. 419, 433 (1922); see also Falk, \textit{Revolutionary Nations and the Quality of International Legal Order}, in \textit{The Revolution in World Politics} 310, 321 (Kaplan ed. 1962), for a similar view.

sidered destroyed even by a considerable amount of battering in practice.\textsuperscript{998} In the instance of subversive intervention, every major and most minor states have consistently affirmed the illegality of the practice and have expressed an obligation to accept the principle of law which forbids the practice, even sometimes while engaged in the act forbidden and while seeking occasionally rather specious excuses for the violation.

Second, as long as the norms in question are acknowledged to exist, a more fruitful search than replacement by horizontal norms essentially inspired by political considerations (in this specific case, at least) would be to look for methods of implementation and of expansion of the norms in existence.

In the third place, the particular form of intervention under consideration—that is, subversive or liberation propaganda, which strikes by definition at the very foundations of the nation-state, the loyalty of its citizens—requires controls if the existing structure of the family of nations (and with it its typical legal order) is to continue without further serious erosion. The survival of the concept of the sovereign state would seem to depend in large measure on the ability of all the states to create effective, implementable rules governing subversion and then to proceed to the enforcement of those rules.

The remaining portions of this inquiry are therefore devoted to the presentation and examination of recommendations for the legal and practical control of subversive intervention. It should be kept in mind, however, that any developments taking place in international law for the protection of uncommitted or other states against Communist subversion will also have to serve to protect Communist states against subversive intervention undertaken by other states against them. No effective legal order can tolerate the existence of a double standard in law, even though some recent and current Communist pronouncements appear to favor the introduction and preservation of such a standard.

\textbf{A. Control Suggestions of Dubious Efficacy}

A relatively small number of suggestions for the control of subversive intervention, proposed over a number of years, merits brief examination in order to bare the weaknesses of the concepts outlined.

Not too many years ago, a sanction termed effective and practical was proposed on a foundation of proportionality.\textsuperscript{99} Since propaganda operated in the sphere of communications, it was suggested that sanctions should be applied against the disseminating state by denying it (through the General Assembly in order to circumvent a Security Council veto) the right to speak on the floor of the Assembly. In case such wrist-slapping should prove to be ineffective, it was proposed further that "all United Nations publications could place an embargo on the utterances of the

\textsuperscript{998} Whitton & Larson 111.

\textsuperscript{99} See id. at 224-26.
viator." Lastly, if all else failed, it was suggested that, under some form of undisclosed interpretation of the International Telecommunications Convention, the I.T.U. could be brought to initiate action whereby the offending country would be deprived of its right to the use of assigned radio frequencies.

The present writer fails to see how the placement of an offending country into a kind of United Nations "Coventry" would deter that state from pursuing its interventionary activities as long as it deemed the latter to represent an important aspect of its vital national interests. As far as the deprivation of frequency use would be concerned, it would appear that the offending country could proceed happily and without hurt to broadcast, as before, on the frequencies theretofore utilized.

Somewhat earlier, a whole array of assorted remedies for the control and termination of subversive intervention was prepared by one eminent publicist. None of the proposals, however, approached a realistic solution of the problem at hand. For instance, "a reduction of international tensions" to moderate fears of aggression could be viewed only as a pious hope as long as no practicable steps leading to such a reduction were supplied. "Resolutions by the United Nations criticizing states that violate their international obligations concerning aggression and subversive intervention" promised little beyond verbal condemnation of, and adverse publicity for, the offenders, as did the concept of proposed resolutions calling upon states to observe the principles of the Charter. The "setting of an example by states professing liberal principles by eliminating racial discrimination and preparing colonies for self-government" appeared to ignore the basic power reasons underlying the propaganda efforts utilizing appeals against racialism and colonialism, while the "extension of cultural exchanges and trade across the Iron Curtain and cooperation among the states at each side in economic development," laudable though the intent was, bore little, if any, relation to subversive propaganda aims and practices.

B. Political Remedies

Diplomacy per se does not appear to offer remedies for subversive propaganda campaigns. At the same time, however, protests against such alien efforts registered through diplomatic channels and with United Nations and regional organs appear to possess some merit. If such protests are made regularly and are supported with proper documentation (transcripts of broadcasts, copies of subversive literature, and so on), the matter of subversion is placed on record pending eventual lodgment of claims for reparation. While protests normally would not lead to an abatement of the subversive propaganda, the filing of documented protests would give rise to publicity for the acts done by the propagandists (in effect, a sort of counter-propaganda would come into being), would call attention in other countries to the

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101 See Martin, op. cit. supra note 27, at 173-80 on diplomatic protests.
subversion attempted, and might thus assist in enlisting popular and even govern-
mental support abroad for the target state.

The admitted weakness of this argument rests in the great difficulty ordinarily
encountered in establishing a provable connection between the subversive propa-
ganda and subsequent injury or damage suffered by the target state. Such a con-
nection would represent, however, a necessary requirement for the establishment of
subsequent claims. Yet, as Friedmann pointed out, the measure of causation of
an unsuccessful rebellion attributable to alien subversive propaganda is highly ques-
tionable even in the most favorable situation, while a successful rising would elimi-
nate all inquiry into the matter.

It is conceivable that the target state might employ diplomatic restrictions or
sanctions against the offending state if diplomatic or consular missions of the latter
served among the agencies engaged in the dissemination of the subversive and libera-
tion propaganda. Modern history abounds with justified as well as with numerous
unjustified expulsions of foreign accredited agents charged with the spreading of
subversion.

The diplomatic sphere, in a rather broad sense, was also involved in some of
the recommendations outlined by Falk among his “principles of normative re-
straint.” It was suggested that certain concepts be adopted—the present writer
believes, however, that this could best be accomplished through diplomatic confer-
ences rather than through meetings designed to establish new norms of international
law by the drafting of universal conventions—in order to avoid nuclear conflicts as
well as to oppose all kinds of totalitarian aggression. Among the principles sug-
gested by Falk, one centered on the idea that if internal war occurred in a state which
was a member of one of the world’s blocs, the rival bloc should restrict itself rigor-
ously to nonintervention. Another principle was represented by the rule that if
internal war occurred in an uncommitted state, any kind of intervention by one bloc
justified—indeed was said to authorize—nonnuclear intervention by the opposing
bloc: such counter-intervention, let it be emphasized, was to be only of “approxi-
mately symmetrical character.” The present writer cannot associate himself with
this concept if it is meant to include subversive counter-intervention. He, therefore,
would support such military intervention as is represented by the instances of South
Korea and South Vietnam. He would be opposed to meeting subversion with sub-
version.

C. Treaty Controls

Many commentators on the issues raised by international subversive propaganda
have concluded that little, if any, in the way of a solution for the problems in ques-
tion can be found in the conclusion of international agreements prohibiting sub-

\(^{102}\) Friedmann, supra note 92, at 500.
\(^{103}\) Consult Martin, op. cit. supra note 27, at 180-88.
\(^{104}\) Richard A. Falk, Law, Morality, and War in the Contemporary World 61-63 (1963).
versive propaganda of all kinds.\textsuperscript{105} This view appears justified as long as one thinks in terms of a \textit{universal convention}. Such an instrument would most likely stand as a monument to an utterly futile effort at achieving centralized legal controls, since it would ignore both the theoretical and the practical policies being pursued by revolutionary as well as by many formerly colonial states. As numerous publicists have pointed out, any normative treaty, the provisions of which are too advanced for the state of the world order, ought to be regarded as stillborn, for it would not be observed.\textsuperscript{106}

It has been suggested, however, that realistic standards could be established under which both national and supranational intervention in internal wars could be regularized.\textsuperscript{107} How this could be achieved without some form of legally binding international agreement of universal scope—the possibility of which is doubted strongly by the present writer—is not clear. But the idea itself opens some fascinating avenues for speculation. One suggestion was that the rules as well as the processes of the law of nations should be adapted through revision to the extralegal conditions prevailing today. In the first place, it was felt a distinction should be drawn between internal wars to be treated as purely domestic conflicts, and hence to be withdrawn from permissible outside interference, and internal wars that had become either an arena of direct or indirect external aggression or that represented the scene of a struggle for minimum rights recognized as mandatory by the community of nations. (In this connection the present writer would like to observe that the existence of such recognition on an obligatory basis appears most debatable!) Once an internal war had been classified as falling into the second grouping—a determination apparently intended as the responsibility of a supranational agency, universal or regional in scope—then the legal norms of nonintervention would be suspended when a “major international actor” violated them. Again, the incumbent government of the state in which the internal war was taking place would be presumed to be the legitimate government to which aid should be given. Yet if the incumbent administration premised “its social order upon colonial subordination or upon principles of elite racial supremacy,” the legal norms about nonintervention against that “illegitimate” administration were to be suspended.

Without advocating a reversal of the “retreat of the white man” or supporting racialism in any form, it is submitted that such proposals violate basic customary and conventional norms of international law. No rule of that law prohibits the ownership of colonial possessions by a sovereign state, nor does there exist a legal principle in the law of nations prohibiting domestic discrimination, racial or otherwise, by the government of a state against groups of its own citizens. To advocate the norms outlined is to deny the basic principle of state sovereignty, the foundation of interna-
national law and of the existing legal order. Even if, "to avoid instability, this certification of illegitimacy must be formally expressed by the United Nations resolutions of censure that achieve support from the overwhelming majority of Members, including leaders of both cold war blocs,"\textsuperscript{108} such certification represents, in the opinion of the present writer, crass interference in the domestic affairs of sovereign states, clearly prohibited by the provisions of the Charter itself.

Lastly, the proposals just discussed do not really affect the subversive activities connected with liberation propaganda. The latter, in its essential stages, precedes the internal war sparked by it, and hence the foregoing suggestions would apply, in effect, only after subversive propaganda had accomplished its work.

The one example of multilateral agreement concerned with the control of subversive propaganda which appears to offer a bit of hope in the long run would seem to be a revision and re-adoption of the abortive "International Convention Concerning the Use of Broadcasting in the Cause of Peace," of September 23, 1936.\textsuperscript{109} That instrument, effective in 1938, had been ratified or adhered to by twenty-two states, including France and the United Kingdom; the Soviet Union, a signatory, failed to ratify the treaty. Neither the United States nor China signed or acceded. Limited in scope to dissemination of propaganda by radio, the agreement provided in articles 1 through 4 the "repressive" clauses prohibiting within the territories of the parties all transmissions calculated (by inaccuracy or otherwise) to "constitute an incitement either to war or to acts likely to lead thereto," to disturb international understanding, or to incite the population of any territory to acts deemed incompatible with the domestic order or the security of any other contracting party.

Disregarding the limitations of applicability to radio alone, it would appear that the 1936 instrument defined rather clearly the activities to be controlled as subversive intervention or subversive propaganda. Nevertheless, should the treaty be renegotiated in the future, it would seem wise to spell out in concise language the sphere of activity to be regulated, based on the experiences of the years since the Second World War.\textsuperscript{110}

As long as effective and universal community control over subversive propaganda appears unrealizable, it is suggested that a multilateral convention on the model of the 1936 instrument be developed.\textsuperscript{111} This could be done in several ways. The General Assembly might direct the International Law Commission to undertake the drafting of such an agreement on a top-priority basis, for submission to the members for suggestions and eventual redrafting prior to opening the instrument for signature.

\textsuperscript{108} Id. at 243-44.
\textsuperscript{110} Id. at 117-18 [arts. 10 and 12 (accession); art. 13 (denunciation); art. 14 (application to dependent territories); arts. 118-119 (revision)].
\textsuperscript{111} Only Friedmann, Intervention, Civil War, and the Role of International Law, 1965 Proc. Proc. 67, 70, appears to agree with the present writer on this point, but even he, in Wolfgang Friedmann, The Changing Structure of International Law 273 (1964), believes that such a proposal requires prior adjustments in outlook on the part of both camps in the Cold War.
Or a special conference on the model of the Geneva Conferences on the Law of the Sea might be convened. Or, most speedily perhaps, the Political Committee of the General Assembly might itself do the job of drafting. The proposed agreement should encompass coverage of all commonly utilized media for the dissemination of subversive propaganda, including the liberation variety. It should cover, as did the 1936 instrument, both private and public agencies for the dissemination of such propaganda, as long as such private agencies were subject to government regulation or licensing. It should not include any exemptions based on presumed colonial rule or racist domestic policies but should emphasize throughout its provisions the sovereign independence of the members of the community of nations and the fundamental danger to every internal political order represented by attempts to subvert the allegiance of subjects and citizens.

Lastly, such an instrument should make it very clear in its wording that the prohibition of subversive propaganda was not to be viewed as an infringement of any alleged international freedoms of communication and information across national frontiers. Since such freedoms do not exist as norms of international law, they would not be violated by the envisaged controls over the dissemination of subversion. Also, since political propaganda must be viewed (as long as it is authorized, sponsored, or disseminated by governments) as one aspect of foreign relations, of foreign policy, it should not be involved with domestic freedoms of speech and of the press.

Such an agreement would not be supported by the states of the Communist blocs nor by a number of the uncommitted countries. It therefore would ab initio fail to achieve anything approaching universal adherence. But if a sufficient number of Western and non-Western states could be brought under legal obligation to refrain from subversive propaganda activities, a consensus of sizable proportions would have been recorded. Such states as refused to become parties to the proposed prohibitory instrument would be on notice that subversion was still regarded as a violation of the norm of nonintervention and that retaliation or reparation, or both, would be sought. The proposed agreement would, therefore, substitute first of all a detailed conventional prohibition for the currently encountered highly selective system of auto-limitation, fluctuating between emphasis on national interest and on customary law norms. In the second place, reinforcement for the principle of nonintervention in a vital area of internal legal order would have been laid down through a multilateral convention.

The fact that the proposed agreement would not be universal in scope, at least not initially, should not matter at all. In fact, it would be necessary to conclude the agreement on a limited basis for the sake of realism, for to wait until the principal actors on both sides in the Cold War would be willing to agree on a reduction of tensions and of propaganda activities through a treaty would simply mean that no agreement would materialize in the foreseeable future.

How could an agreement such as the one outlined above be provided with the
teeth necessary for its enforcement? A variety of provisions can be envisaged, any or all of which might become a part of the proposed general convention on the prohibition of subversive propaganda. Among suggestions meriting examination would be the lodgment of diplomatic protests (with appropriate documentation) by the government of a target state with either the Secretary General of the United Nations or with a special agency created for this purpose within or under the Secretariat of that organization. There might be an expansion of the United Nations broadcasting services to publicize the violation of the prohibitory convention, once the Secretary General or the special office had examined the correctness of the charges filed.\textsuperscript{112} While current appropriations for the United Nations Radio Service are niggardly ($216,000 per year), it is quite conceivable that funds for expanded coverage could be made available under the stimulus derived by the hoped-for widespread adherence of members to the proposed convention (once its importance had been effectively made clear to those members). United Nations broadcasts are said to reach already 107 countries and territories in twenty-seven languages, with a total annual programming of 3,500 hours.\textsuperscript{113}

United Nations broadcasting services in connection with the prohibition on subversive propaganda could be coupled productively with the operations of a worldwide United Nations monitoring service. Such a concept was explored by a number of individuals, such as Chester Bowles and Salvador Lopez,\textsuperscript{114} and most prominently by former President Eisenhower on August 13, 1958, in his address before the General Assembly on peace in the Near East: "I believe that this Assembly should . . . consider means for monitoring the radio broadcasts directed across national frontiers. . . . It should then examine complaints from these nations which consider their national security jeopardized by external propaganda."\textsuperscript{115} Such a monitoring service, after recording propaganda broadcasts, could not only supply additional evidence to whatever United Nations agency was selected to deal with the subject, but could, independently of complaints filed by a target state, direct the attention of the Secretary General or special agency to transmissions of subversive character so that investigation could be undertaken. It is interesting to note in this connection that in February 1964, a special investigative committee of the OAS (Argentina, Colombia, Costa Rica, the United States, and Paraguay) spent weeks in sifting evidence for the drafting of a report on Cuban subversive activities. The evidence submitted by Venezuela included tapes representing one hundred hours of subversive propaganda broadcasts emanating from Radio Havana and other Cuban stations.\textsuperscript{116}

In all instances of alleged violation of the prohibitory convention, determination

\textsuperscript{112} See Whitton & Larson 222-23.
\textsuperscript{113} N.Y. Times, Dec. 26, 1965, p. 17, col. 3.
\textsuperscript{114} Consult Whitton & Larson 184-85.
\textsuperscript{115} 39 DEP'T STATE BULL. 337, 339 (1958); see also Whitton, Radio Propaganda—A Modest Proposal, 52 AM. J. INT'L L. 739 (1958), for an analysis of the monitoring concept.
\textsuperscript{116} Blackstock, op. cit. supra note 7, at 25.
of such violation would have to be surrounded with the normal safeguards found in
the administrative law of Western countries. Assuredly a decision would have to be
analogous to that of a tribunal, not to a political determination.\footnote{\textsuperscript{117} Whitton & Larson 226-27.} In fact, a very
desirable feature to be incorporated in the convention would be a detailed set of
regulations for a speedy review procedure, culminating possibly in an appeal to the
International Court of Justice.

Several publicists have noted with approval the concept of a “right of reply” and
the existence of the 1952 “Convention on the International Right of Correction”
(effective as of August 25, 1962, for six states, none of them of major-power status).\footnote{\textsuperscript{118} Id. at 187-94 for details, and consult the analysis by Whitton, \textit{An International Right of Reply}, 44
Am. J. Int’l L. 141 (1950).} The present writer believes that machinery for the implementation of a right of reply
or a right of correction might operate with some measure of success in the instances
of defamatory and warmongering propaganda but that the very nature and aims of
subversive propaganda exclude it from effective application of these rights.

Broadcasting, as a major means employed for the dissemination of subversive
propaganda of all kinds, is particularly susceptible to a countermeasure often applied
against such activities, the practice of jamming.\footnote{\textsuperscript{119} J. Hyde, \textit{op. cit. supra} note 19, at 605-17, for background; for more recent developments, consult
Martin, \textit{op. cit. supra} note 27, at 83-88, and Whitton & Larson 210-20. See also Note, \textit{Government Exclusion of Foreign Political Propaganda}, 68 Harv. L. Rev. 1393 (1955).} This term refers to the setting up
of radio transmitters broadcasting interference on the same frequencies as an offending
or competing radio transmission originating across a national frontier. It has been
commonly employed by Iron Curtain countries, despite the considerable expense
involved.\footnote{\textsuperscript{120} See \textit{The Red Network}, \textit{News from Behind the Iron Curtain}, Aug. 1953, pp. 56-59; \textit{N.Y. Times},
Nov. 18, 1950, p. 8, col. 8.}

International broadcasting is currently governed by the provisions of the 1952
Buenos Aires Telecommunications Convention. Jamming is, in turn, related to
articles 31 and 32 of that treaty. It should be noted that both the Soviet Union and
the United States are parties to the agreement. Under the terms of the Buenos
Aires convention and of other telecommunications agreements, jamming is prima
facie a violation of voluntarily assumed international obligations. On the other hand,
there are two notable exceptions commonly cited in extenuation of the practice of
jamming: a reservation laid down by the Soviet Union at Buenos Aires in 1952 (a
claim to be able to censor any news representing “incitement to aggression, to war,
and to the use of force”),\footnote{\textsuperscript{121} Whitton & Larson 219.} and the asserted and undoubted right of a state to self-
defense, even against radio transmissions aimed at its national security and its internal
order.\footnote{\textsuperscript{122} Id. as well as Codding, \textit{Jamming and the Protection of Frequency Assignments}, 49 Am. J. Int’l L. 384 (1955). On Nov. 18, 1950, Committee 3 (Social, Humanitarian, Cultural) of the General Assembly,
by a 39 to 5 vote, adopted a resolution condemning jamming of broadcasts. See \textit{N.Y. Times}, Nov. 19,
1950, p. 27, col. 5.}
The present writer believes that any target state for subversive propaganda possesses a perfect legal right to adopt jamming procedures against foreign subversive transmissions, as long as a formal protest as well as a formal notice of intention to institute jamming have been registered with the offending state. It is suggested that, if suitably small portable, and relatively inexpensive, transmitters for jamming purposes can be developed, a target state might be authorized officially by the United Nations agency charged with enforcement of the prohibitory convention to adopt jamming as a means of self-defense. In addition, a loan of the necessary equipment might be granted to a target state by that United Nations agency as an enforcement measure under the convention. If such equipment could be made available to the target state against a moderate rental fee, the receipts from such leases could be utilized both for the acquisition of additional jamming equipment and for the replacement of such units as would inevitably be lost or ruined in the course of operations.

In addition to a general (not universal) convention prohibiting subversive propaganda—or in its place, should such an agreement be impossible of achievement—regional instruments embodying the concepts outlined above for the general treaty and implementing the norm of nonintervention should be developed. Regional institutions capable of concluding and enforcing such particular, regional, instruments—and here the creation of regional international law norms is definitely contemplated by the present writer—abound already: the OAS, the NATO grouping (regardless of the presence or absence of France), the SEATO group of states, and even the Warsaw Pact states (improbable as their inclusion here may appear at present) come to mind.

Actual enforcement procedures adopted against the member of a regional grouping and stemming from a charge of disseminating subversive propaganda would not appear to be in conflict with the frequently invoked article 53 of the United Nations Charter. That article asserts that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” Under contemporary conditions, such authorization appears unlikely in a serious case of subversive propaganda undertaken by a permanent member of the Council or by a government befriended by such a permanent member. It is believed, however, that a regional agency such as the OAS has the legal right to resort to enforcement measures outside the military sphere, such as economic, diplomatic, or communications activities, against the disseminator of subversive propaganda. As Thomas and others have pointed out, officials of the OAS have accepted the view, since the passage of the Rio Treaty, that measures falling short of armed violence can be employed by a regional agency at any time without raising the issue

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123 This concept was developed by the present writer before he realized that Whitton & Larson 226 contained a similar proposal.

of a violation of the Charter of the United Nations. The use of armed force, on the other hand, would have to involve an invocation of article 51 of the Charter as well as of article 3 of the Rio Treaty.

D. Self-Help as a Form of Control of Subversive Propaganda

The subject of controls of all forms of subversive propaganda cannot be abandoned without a brief examination of the position occupied by reprisals as related to such propaganda activities. Reprisals and other varieties of self-help have been held to be legitimate throughout the history of international law. Only in very recent times has the legal status of these techniques been questioned and, in some cases, been denied by publicists. The Charter of the United Nations obligates the members to settle disputes by peaceful means and to refrain from the threat or use of force. On the other hand, it is held that the use of reprisals against another state is not prohibited, provided force in the military sense is not utilized. Presumably reprisals involving force would be permissible if undertaken under the authority of a relevant organ of the United Nations, in accordance with articles 41 and 42 of the Charter. But what would be the situation if a target state of subversive propaganda adopted reprisals, even such as involved the use of force, under the guarantee of article 51 of the Charter concerning the right of self-defense, at least until the United Nations had acted against the alleged aggressors?

The present writer believes that even the use of force would be justified as self-defense in the case of such a target state, if the danger created by the propaganda in question had reached the point at which a condition of "clear and present danger" could be shown to exist.

As far as reprisals short of the employment of force are concerned—as devices to bring about a cessation of subversive propaganda—a number of concrete possibilities of implementation come to mind: nonperformance of treaty obligations, governmental promotion of boycotts of the goods of the offending state, freezing of assets of the latter found in the target state, embargoes on trade with the offending state, detention of vessels of the offending state (old-style embargo), and so on. In all instances, however, the acts of reprisal must not be out of proportion to the original injury suffered or offense given.

Should anyone object to the employment of reprisals, even including military force, against a state guilty of disseminating subversive propaganda, it can be pointed out that prohibitions of the unilateral threat to use force or of the use of various methods of self-help short of war are highly unrealistic. If viewed literally, the Charter has deprived states of valuable tools formerly used to obtain justice and retribution for injuries, without, in practice, substituting a really effective new method for accomplishing the desired ends. As long as this is the case, traditional methods of

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self-help appear legitimate and may serve as valuable techniques to bring about a cessation of subversive propaganda.

If a general convention prohibitory of subversive propaganda should materialize, one of its provisions would have to lay down a requirement that a target state of subversive propaganda, at the beginning of the employment of any method of self-help, would be obligated to report all relevant details to the United Nations agency charged under the terms of the convention with the enforcement of the instrument.

IV

LEGAL IMPLICATIONS OF CONTROLS OF SUBVERSIVE PROPAGANDA

A number of significant objections to the concept of legal controls over subversive propaganda have centered on the contention that such controls would violate asserted freedoms of speech and of information at the national and international levels. This argument poses a number of interesting issues. In the first place, it alleges the existence of a conflict between two sets of norms of international law: one quite definitely prohibiting subversive propaganda as intervention, the other presumably guaranteeing freedom of the flow of information across national frontiers, coupled with the existence of a freedom to know and to speak.

It cannot be doubted that international communications, by whatever means, perform two parallel functions. One is to reduce to a minimum the flow and influence of hostile (subversive, and so on) propaganda; the other is to increase to the greatest possible extent the flow and exchange of information. Since these functions are inextricably connected, it is unavoidable that one is faced at some point by the question whether the advantages to be obtained from a reduction, or even suppression, of hostile propaganda are not perhaps offset by the inevitable restraints and controls on a free flow of information across frontiers.126

The present writer believes that many of the arguments centering on this undoubted dilemma are completely irrelevant to the central problem of the control of subversive propaganda. As long as one deals with the question of government dissemination of subversion, most arguments based on freedom of information, freedom of speech in the domestic constitutional meaning, and freedom to hear, simply ignore the issue. They would only re-enter the picture when a discussion of restraints on private dissemination of propaganda were undertaken. And, as Whitton and Larson pithily commented, “A sustained propaganda campaign aimed at subversion, for example, is not corrected by mere freedom of information,”127 certainly not when it is a government which undertakes the actual propaganda effort.

Normally, it can be maintained, a government is free to speak its mind, even across national borders; but there exists even for governments a line beyond which

126 Whitton & Larson 195.
127 Id. at 248.
their freedom of speech cannot be allowed to go without challenge: subversion of the internal order of another state is illegal.

Democratic governments, particularly that of the United States, have often objected strenuously to proposals to institute curbs on the dissemination of subversive propaganda. Thus, at the Caracas Conference of 1950, the Council of the OAS submitted a draft protocol (as a working document) dealing with controls over propaganda aimed at fomenting internal war; the United States informed the other members that if the proposed key provisions (article VII, on radio propaganda, public and private) were adopted into a treaty, the United States would be forced to make a reservation to the article. The American objection stated that "Any attempt to fix this general policy, however, into specific international treaty obligations and thus to translate it from the area of policy into the regime of law would, in the view of the Government of the United States, be fraught with grave dangers to freedom of speech, sacred in this Hemisphere and to democratic countries everywhere." This American interpretation ignored the fact that the United States government was at least indirectly responsible, through licensing procedures, for private American propaganda activities aimed across national frontiers. Possibly, too, the American objection might never have been voiced if the draft instrument had been limited in its relevant provisions to governmental propaganda activities.

The prohibitory convention suggested earlier in this investigation should, of course, not be restricted to "public" propaganda alone, for indirect responsibility for radio (and television) propaganda by private persons and groups devolves upon states. Friedmann pointed out recently that the creation of a private communications satellite company by the Communications Satellite Act of 1962 involved the United States government in a degree of responsibility, for the statute did specifically provide for governmental supervision in all activities of the company related to public international affairs. Thus governmental interference for the sake of public policy was contemplated and apparently no conflict with freedoms of speech and information was anticipated.

In the realm of public subversive propaganda activities, one cannot seriously maintain that lack of effective (as contrasted with indirect or possible) governmental controls, or any traditions of free speech, should or could prevent state regulation in the interest of national policy to prevent dissemination of subversion. Whitton and Larson emphasized this conclusion with a wealth of relevant backing by responsible publicists. Thus Cavagliari asserted as early as 1927 in a report to the Institute of International Law that "a state cannot tolerate without incurring the gravest international responsibility, the transmission from its territory of messages . . . which are addressed to the citizens of any state to incite them to revolt." In the same year, the

160 33-1 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 152 (1927).
Institute declared that state responsibility was created whenever a state did not employ the means at its disposal to prevent transmissions "which, by their contents, are of a nature to disturb the public order of another state, when similar emissions have already been called to its attention by the latter." And Hyde believed that failure to fulfill an international obligation resulted from the abstention by a state to employ the means available to it to prevent the use of radio services to cause injury to another state by radio transmissions. Basically, then, no state can ignore the activities of radio and other communications media on its territory when those activities impinge on the conduct of foreign relations. If, as a result, a violation of international law takes place, state responsibility may come into being.

What is the status of the asserted rights of freedom of speech, information, and so on, that have on occasion been said to stand in the way of effective regulation of the dissemination of subversive propaganda? In all instances discussed in this section, it must be kept in mind that there is no direct general obligation on any government to control or suppress the opinions of private individuals, except in very specific and rather extreme cases. International responsibility of a direct nature devolves only on governments, their public acts, and those of certain key officials and agencies—though, in the case of communications media requiring licensing and other state controls, an indirect responsibility may develop for the government in the case of subversive propaganda.

Beginning with the adoption of the Charter of the United Nations, a remarkably extensive yet equally remarkably unproductive series of efforts have been made to create binding guarantees for freedoms of speech and of information. The very Preamble to the Charter asserted already that the peoples of the United Nations were determined "to reaffirm faith in fundamental human rights." While the Preamble is, of course, an integral part of the Charter which, in turn, must be viewed in many of its provisions as a nonself-executing treaty, the Preamble, by definition, should not be viewed as setting forth binding obligations for the members of the organization. The present writer cannot agree, therefore, with Svarlien's view that the Preamble must "be regarded as a vital part of the existing law of nations."

On examining the actual Charter provisions, one finds that article 1, paragraph 3, mentions "promoting and encouraging respect for human rights and for fundamental freedoms"; article 13 directs the General Assembly to study and make recommendations for the "realization of human rights and fundamental freedoms for all"; article 55 states that the United Nations are to promote "universal respect for, and observance of, human rights and fundamental freedoms for all," while article 56 directs the Economic and Social Council to make recommendations for the identical purposes mentioned in the previously cited article. Nowhere, however, are the human rights and fundamental freedoms spelled out, listed, or defined!

131 Hyde, op. cit. supra note 19, at 606.
132 Svarlien, op. cit. supra note 19, at 438.
There is no need here to outline step by step the ambitious activities initiated within United Nations agencies soon after 1945 for the purpose of implementing the vague references listed above for rights and freedoms, such as the efforts of the General Assembly, of the Economic and Social Council, of the Commission of Human Rights, and of the Geneva Conference of 1948 on Freedom of Information and of the Press.\textsuperscript{104}

The net results of all the meetings consisted of the Convention on International Right of Correction (adopted by six countries) and the Universal Declaration of Human Rights of 1948, the latter not being a treaty at all. Beyond these, only numberless successive drafts of well-intentioned documents on human rights, rights of man, freedom of information, and so on were gathered in the files of the United Nations agencies, victims, at least in part, of the Cold War. And it is interesting to note that even the most progressive draft instrument, in its regulatory provisions on controls over dangerous propaganda, only \textit{authorized} the prospective parties to suppress such propaganda, rather than obligating them to do so.

In summary, it is felt by the present writer that since the Charter of the United Nations does not spell out human rights and freedoms related to the control of propaganda, since the one convention adopted does not relate directly to subversive propaganda, and since the Universal Declaration of Human Rights ought to be regarded either as a consensus or, better, as a species of moral preachment not bound up at all with legal obligations or norms of law, any attempt to regulate subversive propaganda would not conflict with legally established human rights and freedoms of speech or information. The latter simply do not exist as rights under either customary or conventional international law. It should be noted, moreover, that one regional instrument dealing, \textit{inter alia}, with freedom of expression, the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and soon thereafter in effect,\textsuperscript{105} surrounded the freedom of expression delineated in its article 10 with a number of specific, adequate, and reasonable safeguards to prevent abuses of the freedom in question.

If, by some miracle not anticipated, the Universal Declaration of 1948 were transformed into conventional law, its present contents could still not be construed as being in conflict with a regulation of subversive propaganda. The relevant article, number 19, states that “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.”\textsuperscript{106} It is difficult to disagree with the first part of that noble statement. But when it is asserted that no restrictions ought to be placed on receiving and imparting information and ideas through any media and regardless of frontiers, reality has been left

\textsuperscript{104} For details consult Whitton & Larson 196-209.
behind and Utopia beckons. As has been pointed out repeatedly, subversive propag-
anda strikes at the very foundations of national political existence, at the loyalty
of the citizens of a state. Under the justified plea of self-defense, any state will
attempt to halt such outside interference, and no asserted “freedoms” can deprive a
sovereign authority of its basic right to seek continuity of its existence. As far as
the wording of article 19 is concerned, a target government would simply assert that
the guarantees given did not cover subversion and treason, applicable though they
might be to other forms of human communication and information. By this simple
declaration, which, the present writer believes, would sooner or later emanate from
all target governments if the instrument in question became a treaty, all conflict be-
tween controls and freedoms would be eliminated through a simple, logical, and
reasonable interpretation of an otherwise totally unrealistic statement of freedoms.

The United Nations “Draft Covenant on Civil and Political Rights,” skillfully
assembled by Baxter from the mass of relevant drafts, while reiterating the pro-
visions just discussed, realistically continues in paragraph 3 of article 19 to the effect
that

The exercise of the rights provided for ... carries with it special duties and responsi-
bilities. It may therefore be subject to certain restrictions, but these shall be such
only as are provided by law and are necessary, (1) for respect of the rights or repu-
tations of others, (2) for the protection of national security or of public order
(‘ordre public’), or of public health and morals.¹³⁷

However, the present writer believes that “by law” refers to domestic legislation and
that hence the restrictions envisaged would not prevent a government bent on dis-
seminating subversive liberation propaganda from doing so. And again article 26 of
the same Draft Covenant, suggested by Baxter for placement directly after article
19,¹³⁸ in providing that “any advocacy of national, racial, or religious hatred that con-
stitutes incitement to discrimination, hostility or violence shall be prohibited by law,”
suffers from the same shortcoming as was evident in the case of article 19: the “law”
appears to be a reference to domestic law only.

More important, as McDougal and Bebr noted, fundamental changes such as
have been contemplated through the adoption of a general (universal) law-making
treaty are seldom achieved quickly and often run counter to the policies of major
powers.¹³⁹ A dramatic illustration of this truism was supplied in 1953 when the
United States government announced that it did not intend to become a party to any
general treaty of human rights and freedoms.¹⁴⁰

(1962); see Baxter, supra note 137, at 871.
¹⁴⁰ See id. at 634 n.117 for further documentation.