

merge with the conception of *Staatsrechtsprimat*. Because of its association with traditional German theories of state supremacy the dualist conception may present a real danger, for juristic theories, when inspired by nationalist sentiment, tend to harden into legal facts. The new constitutions of the three *Länder* in the United States Zone seek to obviate this danger. Since they are probably intended to be the prototypes of the constitution of the future German state (whether composed of the *Länder* of two or three of the zones of occupation, their provisions relating to international law may represent some advance over the situation which prevailed under the Republic. Whether this advance proves to be real rather than apparent will depend upon the sincerity of the German people and the effectiveness of the international control by which they are held to their own professions.

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#### EFFORTS TO CURE DANGEROUS PROPAGANDA

Propaganda, particularly through the medium of the radio, becomes a grave menace to peace when used by an aggressive state to stir up hatred, revolution, and war.<sup>1</sup> In the preparation and commission of his crimes against the peace of the world Hitler made propaganda into a lethal weapon and, as we all know, the development of radio toward this end was one of the most pernicious accomplishments of the Nazi machine.

This being the case, one might have expected to see post-war planners devote considerable attention to the task of curbing subversive and aggressive propaganda. Surprisingly enough, however, nothing definite along this line was accomplished at San Francisco. Although the Security Council, under Article 39 of the Charter, surely has the right to deal with a case of propaganda which it considers to be a "threat to the peace, breach of the peace, or act of aggression," no direct mention of pernicious propaganda appears in the Charter.

Despite this absence of any reference to propaganda in the Charter, the United Nations has not been blind to its dangers. A number of current UN activities offer an opportunity to approach the matter from various angles. At the suggestion of Yugoslavia, the following item has been added as part of the provisional agenda of the second regular session of the General Assembly:

Recommendations to be made with a view to preventing the dissemination with regard to foreign states of slanderous reports which are harmful to good relations between states and contrary to the purposes and principles of the United Nations.<sup>2</sup>

<sup>1</sup> Whitton and Herz, "The Radio in International Politics," in Childs and Whitton, *Propaganda by Short-Wave*, Princeton, 1942, Chapter I.

<sup>2</sup> *UN Weekly Bulletin*, September 16, 1947, p. 369.

Furthermore, any future disarmament treaty might well include provisions designed to curb the psychological along with the material weapons of warfare.<sup>3</sup> The International Law Commission (ILC), envisaged by the UN Commission on the Progressive Development of International Law and its Codification in its recent report, could consider aggressive propaganda as one of the "offences against the peace and security of mankind" whose codification it is proposed to undertake.<sup>4</sup> The ILC might also include this category of offences in its proposed "code of international penal law."<sup>5</sup> This movement is of further interest to the jurist because some types of propaganda are already recognized as constituting acts in violation of established rules of international law.<sup>6</sup> Also the campaign against a certain kind of propaganda is part and parcel of the movement for the repression of terrorism, to which international lawyers gave considerable attention during the years just prior to the war.<sup>7</sup> It is claimed that states

<sup>3</sup> Text proposed by the Legal Committee (Moral Disarmament), Conference for the Reduction and Limitation of Armaments, Conference Documents, Vol. II (IX. Disarmament. 1935. IX. 4), p. 702:

The H. C. P. undertake to adopt legislative measures empowering them to penalize: . . . Inciting public opinion by direct public propaganda with a view to forcing the State to embark upon a war of aggression. 3. Participation in or support of armed bands organized in the territory of the State, which have invaded the territory of another State; 4. The dissemination of false news, reports or of documents forged, falsified or inaccurately attributed to third parties, whenever such dissemination has a disturbing effect upon international relations and is carried out in bad faith. 5. Causing prejudice to a foreign State by maliciously attributing to it acts which are manifestly untrue and thus exposing it to public resentment or contempt.

<sup>4</sup> U. N. Committee on the Progressive Development of International Law and its Codification, Report of the U. S. Representative (Philip C. Jessup), *Department of State Bulletin*, Vol. XVII, No. 420 (July 20, 1947), pp. 121-127. UN doc. US/A/AC.10/4, June 19, 1947.

<sup>5</sup> Pella, *La Répression des Crimes contre la personnalité de l'Etat*, in *Académie de Droit International, Recueil des Cours*, Vol. 33 (1930), pp. 677, 805.

<sup>6</sup> While the international law of this subject is still uncertain and incomplete (another reason why it is worth the study of experts on codification), there seems to be agreement that subversive activities against foreign states, if emanating directly from the Government or organizations receiving from it financial support, engage the international responsibility of the state: L. Preuss, "International Responsibility for Hostile Propaganda against Foreign States," in this *JOURNAL*, Vol. 28 (1934), p. 649 ff. See P. B. Potter, *L'Intervention en droit international moderne*, in *Académie de Droit International, Recueil des Cours*, Vol. 32 (1930), p. 622. Also see Oppenheim (Lauterpacht), *International Law*, Vol. I, Peace, pp. 238-240, and authorities therein cited; C. C. Hyde, *International Law, Chiefly as Interpreted and Applied by the United States*, 1945 (2d ed.), Vol. I, p. 605 ff.

<sup>7</sup> After Yugoslavia appealed in 1934 to the League of Nations with regard to alleged activities of Yugoslav terrorists in Hungary, the Council set up a committee of experts to study the matter (*O. J.*, 1934, p. 176). This committee prepared a draft convention considered later by the Assembly (*Off. J.*, 1936 *Assembly, Special Suppl.* No. 155, p. 135). The Council, in 1937, decided to convene an international conference to consider the matter: *Monthly Summary*, May, 1937, p. 102. See also Kuhn, "The Complaint of Yugoslavia against Hungary with Reference to the Assassination of King Alexander," this *JOURNAL*, Vol. 29 (1935), p. 87.

whose security is menaced by propaganda campaigns originating abroad may evoke, as measures of legitimate self-defence, the right to retaliate which, in the case of radio, takes the form of "jamming" offensive messages.<sup>8</sup>

UNESCO, too, has the problem on its agenda. As part of its program in the field of mass communication this organization plans to cooperate with the United Nations in the preparation of a report on the obstacles to the free flow of information and ideas, concerning itself with "all restrictions on the flow of information and ideas across international boundaries, and with the suppression and distortion of information and ideas by any influence."<sup>9</sup>

But the most direct attack on propaganda as a threat to peace is likely to come through still another United Nations channel—the Conference on Freedom of Information and of the Press, scheduled to be held in Geneva next Spring, in accordance with a resolution adopted by the General Assembly on December 14, 1946.<sup>10</sup> In this resolution it is recognized that freedom of information cannot be absolute, but "requires as an indispensable element the willingness and capacity to employ its privileges without abuse." Further, "it requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent." The Sub-Commission appointed by the Economic and Social Council has suggested, as part of the agenda for the proposed conference, "the study of measures for counteracting the persistent spreading of demonstrably false or tendentious reports which confuse the peoples of the world, aggravate relations between nations, or otherwise interfere with the growth of international understanding, peace, and security against a recurrence of Nazi, Fascist, or Japanese aggression."<sup>11</sup>

It seems certain, therefore, that the grave question of pernicious propaganda will come up for consideration next year at the conference on Freedom of Information and of the Press. It is unfortunate, however, that this exceedingly complex and difficult problem, above all the matter of radio propaganda, is to be dealt with as only a minor part of the vast subject of freedom of communications. In our view, much more could be accomplished if a special conference, similar to the Inter-Governmental Conference for the Adoption of a Convention Concerning the Use of

<sup>8</sup> Hyde, p. 606; A. Raestad, *Le projet de convention sur la radiodiffusion et la paix*, in *E. D. I. et L. C., 3e série*, tome XVI (1935), p. 289 ff.; C. G. Fenwick, "The Use of the Radio as an Instrument of Foreign Propaganda," in this *JOURNAL*, Vol. 32 (1938), p. 339 ff.

<sup>9</sup> Report of Program Commission, adopted by the General Conference, Paris, November 19–December 10, 1946. UNESCO/C/23/46 (rev), pp. 15–16.

<sup>10</sup> *General Assembly Journal*, No. 75. Supplement A-64, Add. 1, pp. 856–857.

<sup>11</sup> E/441, 5 June 1947.

Broadcasting in the Cause of Peace, held at Geneva in 1936, were devoted to this single matter.<sup>12</sup> This we believe for two reasons, as indicated below.

First, propaganda is a problem *sui generis*. Radio differs from other means of communication because broadcasts can readily be sent across frontiers and even beamed to the other end of the world, and all defences against it have proved to be inadequate. Propaganda by short-wave is a unique weapon of power politics; it is admirably adapted to arouse minorities against a government, incite peoples to revolution, or drive them to hatred, aggression or war. Finally, as demonstrated by the years of study and the enormous documentation which preceded the 1936 conference on broadcasting and peace, the subject is one requiring the most intensive preparation.

In the second place, such a limited conference would seem to have a greater chance to succeed than the much broader one on freedom of communications. To judge by the bitter clashes in committee between the representatives of Soviet Russia and the United States, there is little possibility of a meeting of minds between these two countries with regard to the freedom of the press. The Soviets believe that freedom of the press can only be maintained by governmental ownership; they insist on the right of censorship and refuse to allow foreign correspondents freedom of movement.<sup>13</sup> The position of the United States Government is diametrically opposed to such views, as shown by the draft treaty on an international agreement on freedom of information, released by the Department of State on September 7, 1947.<sup>14</sup>

On the other hand, when it comes to the fight against propaganda, Soviet Russia and the United States are apparently following similar lines. Thus, in the Sub-Commission already referred to, the Soviet delegate proposed that one object of the proposed convention should be "the unmasking of war-mongers and the organization of an effective struggle against organs of the press and information which incite to war and aggres-

<sup>12</sup> The signatories undertook to prohibit the transmission within their territories of anything detrimental to good international understanding, or which might incite the population of any of their territories to acts incompatible with internal order or security; they promised to see that transmissions from their stations should not constitute an incitement to war; and to prevent the making of incorrect statements. Text in this JOURNAL, Supplement, Vol. 32 (1938), p. 113. Signed at Geneva, September 23, 1936, and ratified by 19 states, including Soviet Russia (but not by Germany or Italy, the states whose broadcasts were the most objectionable). Van Dyke, "The Responsibility of States for International Propaganda," in this JOURNAL, Vol. 34 (1940), pp. 58, 59.

<sup>13</sup> E/Ac.7/30, 1 August 1947.

<sup>14</sup> For instance, see Article II, "Correspondents from each signatory (together with their equipment) shall have free ingress to and egress from the territories of each other, . . ." and Article IV, "All copy of correspondents or information agencies of each signatory shall be permitted free egress from the territories of the other without censorship, deletion or editing." *The New York Times*, September 8, 1947.

sion.”<sup>15</sup> Rather than to embark upon an apparently fruitless attempt to reach an agreement on the broader question of freedom of the press, our government, we submit, should rather take the Russians at their word, and call a conference for the more restricted but no less important matter of curbing the use of propaganda for aggression and war.<sup>16</sup> For here is a real opportunity, unfortunately very rare these days, for the two “super-powers,” whose cooperation is the *sine qua non* of peace, to labor together in the same cause.

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<sup>15</sup> E/Ac.7/38, 7 August 1947.

<sup>16</sup> The need for an international convention to curb pernicious propaganda is only too evident today. See Charles A. Siepmann, “Propaganda and Information in International Affairs,” in *Yale Law Journal*, Vol. 55 (1946), p. 1261: “To reestablish good manners in communication, some form of international convention may be necessary by means of which the evil and aggressive aspects of the use of propaganda are eliminated.” For an enlightening discussion of the problem, and a proposal for a draft treaty on freedom of information which includes provisions to “outlaw” certain acts defined as “psychological aggression,” see James P. Warburg, *Unwritten Treaty*, New York, 1946, p. 151 ff.

Soviet Russia might find it difficult to respect her obligations under such a convention and still carry on the kind of pernicious propaganda in which, both at home and abroad, she is indulging today. On the other hand would the United States, under such a treaty, be obliged to curb newspapers and individuals who speak loosely today of a “preventive war”?