

1988

International Propaganda and Developing Countries

Adeno Addis

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Communications Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Adeno Addis, *International Propaganda and Developing Countries*, 21 *Vanderbilt Law Review* 491 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol21/iss3/5>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Journal of Transnational Law* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

International Propaganda and Developing Countries

*Adeno Addis**

TABLE OF CONTENTS

I.	INTRODUCTION	492
II.	TOWARD A DEFINITION OF PROPAGANDA	493
III.	THE RISING CONCERN IN DEVELOPING NATIONS ABOUT THE THREAT OF INTERNATIONAL PROPAGANDA	495
	A. <i>Advances in Communications Technology</i>	496
	B. <i>Geopolitical Considerations</i>	498
	C. <i>Informational Independence as a Prerequisite for Self-Determination</i>	500
IV.	INTERNATIONAL REGULATION OF PROPAGANDA	501
V.	SELF-DETERMINATION AND PROPAGANDA	509
	A. <i>Disinformation</i>	509
	B. <i>Structural Propaganda</i>	516
VI.	STATE RESPONSES TO PROPAGANDA	520
	A. <i>Jamming</i>	520
	B. <i>Ordinary Censorship</i>	527
VII.	INTERNATIONAL RESPONSES TO PROPAGANDA	531
	A. <i>Prior Consent</i>	531
	B. <i>Right of Correction</i>	533
	C. <i>An International Mass Media Council</i>	538
	1. Structure	538
	2. Procedure	541
	3. Fact versus Opinion	542
	4. Enforcement Powers	543
VIII.	RIGHT OF CORRECTION AND MEDIA COUNCIL AS ASPECTS OF ACCESS TO THE INTERNATIONAL MEDIA	544
IX.	CONCLUSION	547

* Assistant Professor of Law, Loyola University Law School (New Orleans). B.A. 1977, LL.B. 1980, Macquarie University (Australia); LL.M. 1983, J.S.D. 1987, Yale University.

I. INTRODUCTION

From its origins as an ecclesiastical term, the word propaganda has gradually assumed a secular role.¹ Indeed, its secularization is closely followed by the notoriety for which it has come to be known. Propaganda is currently used to characterize certain types of communicative actions: the systematic, coordinated manipulation of symbols to influence behavior; the dissemination of false information to induce behavior that would not occur absent the information; or a combination of these situations. And generally, the term is used not only to describe but also to evaluate communicative actions. In some social systems the term has a dual usage,² while in others—especially in the West—it is used pejoratively to describe communications whose intentions and functional consequences are considered illegitimate.³ Leonard Doob was in some sense correct when he noted that “[a]n effective way in Anglo-Saxon society to insult, belittle, or expose a man is to call him a propagandist.”⁴

This Article will use the term propaganda in its negative sense and explore its impact on developing nations' capacity for self-determination.

1. Initially, the term propaganda referred to the Committee of Cardinals in the Roman curia, *Congregatio de propaganda fides* (Congregation for the Propagation of Faith), established in 1622 by Pope Gregory XV and charged with overseeing foreign missions. C. CHERRY, *WORLD COMMUNICATION: THREAT OR PROMISE?* 113 (2d ed. 1971).

2. In the Soviet Union and other socialist countries, propaganda is used in both a positive and a negative sense depending upon the identity of the communicator and also its perceived intentions. Propaganda can be used in a positive sense to describe communicative actions designed to explain the cause and achievements of socialism to both internal and external audiences. It can also be used in a negative sense to deride and discredit communicative actions that are seen as contrary to the national interest and the cause of socialism. When used negatively, adjectives like “imperialist” are usually attached to the term to clearly illustrate the perceived intention and value of the communication. See generally V. LENIN, *WHAT IS TO BE DONE?* (1943); B. WOLFE, *THREE WHO MADE A REVOLUTION* (1948); Grzybowski, *Propaganda and the Soviet Concept of World Public Order*, 31 *LAW & CONTEMP. PROBS.* 479 (1966).

3. Powell, *Towards a Negotiable Definition of Propaganda for International Agreements Related to Direct Broadcast Satellites*, 45 *LAW & CONTEMP. PROBS.* 3 (1982) (“Among the accusatory statements made during periods of international tension, few terms are more derogatory than ‘propaganda.’”).

Some in the United States, however, argue for a positive understanding of propaganda. Thomas Sorensen, a former United States information officer, urges that the United States must also “engage in propaganda,” and that “merely ‘informing’ people” is not enough; its communication institutions must be “advocates, persuaders-propagandists” for our views and values. T. SORENSEN, *THE WORD WAR: THE STORY OF AMERICAN PROPAGANDA* at x (1968).

4. L. DOOB, *PUBLIC OPINION AND PROPAGANDA* 231 (1948).

Following a brief suggestion about a workable definition in Part II, Part III isolates the particular threat that propaganda poses for developing nations. Part IV then surveys the fractured history of international propaganda regulation. Part V examines the relationship between self-determination and propaganda, with specific reference to disinformation and what will be termed "structural propaganda." Individual state responses to propaganda are outlined in Part VI. Part VII explores the same issue on the international level and suggests the creation of an international right of correction as well as a mass media council. Part VIII explicitly links the right of correction and mass media council with the current international movement (primarily constituted by developing countries) for access to the international media. Indeed, this section argues that these two institutions—the right of correction and mass media council—must provide an integral part of the institutional framework through which developing countries may gain access to the international media. Finally, Part IX concludes that international solutions are available and should be adopted if developing nations are to escape the deleterious impact of propaganda.

II. TOWARD A DEFINITION OF PROPAGANDA

Propaganda is a structural or preconceived, systematic manipulation of symbols, aimed at promoting uniform behavior of social groups congruent with the specific interests of the communicator.⁵ This communication may be characterized by either of the following: (1) It is intentionally false, in which case it is called disinformation; or (2) It is selectively false, in which case one might refer to it as distorted or unbalanced information. In addition, the following desired outcomes or functional consequences distinguish propaganda from other forms of communication: (1) It might be intended to undermine the legitimacy of social and political institutions of a community or a nation, in which case one might refer to it as hostile or subversive; or (2) because of the selective (distorted) and one-sided nature of the communication, it might have the functional consequence of undermining the cultural and social structures of a community and hence undermine that community's capacity for self-determination. This Article will refer to this as structural negation of

5. B. HAZAN, *SOVIET PROPAGANDA: A CASE STUDY OF THE MIDDLE EAST CONFLICT* 12 (1976). See also *Reports of the Working Group on Direct Broadcast Satellites: Comments Received from Governments, Specialized Agencies, and Other Competent International Bodies*, 25 U.N. GAOR Comm. on the Peaceful Uses of Outer Space at 7, U.N. Doc. A/AC.105/79 (1970) [hereinafter *Reports of the Working Group on DBS*]; T. QUALTER, *PROPAGANDA AND PSYCHOLOGICAL WARFARE* 27 (1962).

self-determination. Thus, for the purpose of this analysis of interstate propaganda, the term propaganda is fully defined as a systematic manipulation of symbols that is structurally selective and one-sided or intentionally false, and which has a desired outcome or functional consequence of undermining the political and socio-cultural institutions of a community or a nation, either overtly or covertly.

So defined, propaganda clearly presents a legitimate concern for developing countries⁶ and should be included in any debate on international information flow. Propaganda in the above sense is, by its very nature, dominating, antidialogic,⁷ and manipulative. It effectively denies individuals and communities an essential condition for self-determination—accurate and balanced information. Accordingly, propaganda becomes injurious both to its intended victim and its target audience, who are sometimes one and the same. For example, a government might im-

6. The states of the world may be dichotomized in various ways: North-South, East-West, Developed-Underdeveloped, Developed-Developing, and Industrialized-Third World. In this Article, "developing," "Third World," and "underdeveloped" will refer to the same group of countries. A precise definition of these terms is not possible, for they do not refer to a homogeneous entity. In this Article, however, the terms will refer to those states (mainly in Asia, Africa, and Latin America) whose general socio-economic conditions are structurally underdeveloped and whose attitudes toward the existing international order reflect the belief that this order contributed to their unfavorable socio-economic and cultural conditions. See Greene, *Toward a Definition of the Term Third World*, 1 B.C. THIRD WORLD L.J. 13 (1980); Langley, *The Third World: Towards a Definition*, 2 B.C. THIRD WORLD L.J. 1 (1981).

7. Dialogue involves an interactive or communicative situation in which each individual, group, or nation is recognized as an active participant. To conceive of active participation among groups as an important feature of dialogue is to concede that sameness and difference are constituent parts of it. For the dialogic interaction to continue, participants must simultaneously realize that they are equal and different. Put simply, dialogue is at once the establishment of the difference and the discovery of sameness; it is a meeting of subjects in order to name and transform the world. On the other hand, in the antidialogic (monologic) encounter, the dominating "I" transforms the dominated "you" into a mere "it." The dominated becomes nothing more than an instrument for the accomplishment of the monologically defined goals of the dominator.

Dialogue may be personal or institutional. In many ways dialogue in the age of mass society (both nationally and internationally) concerns institutional dialogue in which all potential participants have access to means of mass communication; equal chances to criticize or refute all explanations, interpretations, and justifications; and the opportunity to advance alternatives. Dialogue, therefore, assumes the distribution of communication resources in such a way that all participants have the necessary resources that will enable them to interact actively. For an interesting formulation of dialogic communication, see Cornell, *Toward a Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291 (1985). See also R. BERNSTEIN, *BEYOND OBJECTIVISM AND RELATIVISM: SCIENCE, HERMENEUTICS, AND PRAXIS* (1983).

plant false information in order to mislead a nation's elite in terms of judgments they must make, or a medium may deliberately disseminate false information to persuade a particular audience to take the position the disseminator prefers. Most often, however, the two are different. When, for example, one implants a forged document purporting to be a secret plan or communication from agents of one nation (the intended victim) to the elite or the public of a third nation (the target audience), the target audience whom the document is attempting to influence is clearly quite different from the intended victim.⁸

The injury to the intended victim as a result of propaganda is clear and needs no elaboration. Yet, even when the target audience is different from the intended victim, the injury to that audience is no less severe because propaganda denies it the ingredients—the necessary prerequisites—for making appropriate decisions. In other words, propaganda denies its target audience an accurate flow of information and hence its capacity to make informed choices.

III. THE RISING CONCERN IN DEVELOPING NATIONS ABOUT THE THREAT OF INTERNATIONAL PROPAGANDA

“When two elephants fight it is the grass that suffers.”

Tanzanian Proverb.

Although propaganda has been a staple diet of international relations for a major portion of world history, developing nations are increasingly concerned by its prominence in the modern, post-colonial era.⁹ This uneasiness may be explained by three related factors: (1) the rapidly advancing sophistication and reach of communications technology; (2) the widespread perception that the superpowers consider developing nations solely in terms of geopolitical calculations; and (3) the realization that

8. A good example of this involved an incident that created tension between United States and Ghana in 1983. A forged dispatch from the West German Embassy in Accra, Ghana appeared in Ghanaian papers. The document alleged that the United States Ambassador to Ghana had complained about his CIA staff for its lack of progress in toppling the Ghanaian Government. U.S. Dep't St., *Soviet Active Measures, Special Report No. 110* 5 (1983) [hereinafter *Special Report No. 110*], reprinted in *Soviet Active Measures: Hearings on United States Policy Toward East Europe, West Europe, and the Soviet Union Before the Subcomm. on European Affairs of the Senate Comm. on Foreign Relations*, 99th Cong., 1st Sess., pt. 2, 215 (1985) [hereinafter *Hearings on Soviet Active Measures*]. The target audiences here were the Ghanaian elite and public, while the intended victim was obviously the United States Government.

9. See 3 PROPAGANDA AND COMMUNICATION IN WORLD HISTORY 516-34 (H. Lasswell, D. Lerner, & H. Speier eds. 1980).

informational and cultural independence are constitutive elements of genuine and full independence.

A. *Advances in Communications Technology*

The spectacular transformation in communications technology in the past two decades seems to provide the propagandist with immeasurably more powerful means of disseminating his message, correlatively making the intended victim more vulnerable. Perhaps the best example of this phenomenon is the emergence of the direct broadcasting satellite (DBS), which may see widespread use in the future. Direct broadcasting satellites are high power satellites that "take audio and video signals from ground or other supersurface transmitters and retransmit them in the form of radio communication for direct reception by dish-shaped antennae."¹⁰ Thus, DBS will enable a transmitting state or private entity to reach citizens of another state without the receiving state's cooperation or consent. Citizens of the receiving state simply need a small dish on which to pick up the broadcast. Moreover, because direct broadcasting satellites are stationed in the geostationary orbit,¹¹ a single DBS signal can cover forty-three percent of the earth's surface, encompassing many countries and cultures.¹²

The positive potential of DBS is immense. It makes possible a much wider dissemination of information and cultural intercourse among nations, while also enabling nations with many remote areas and rugged terrain to reach citizens whom they could not have reached in any other

10. The Georgetown Space Law Group, *DBS Under FCC and International Regulation*, 37 VAND. L. REV. 67, 69 n.1 (1984). See generally MCPHAIL, *ELECTRONIC COLONIALISM: THE FUTURE OF INTERNATIONAL BROADCASTING AND COMMUNICATION* (1981).

11. The geostationary orbit is a circular orbit roughly 22,300 miles (35,800 kilometers) above the equator and approximately 163,000 miles (260,000 kilometers) in length. A satellite placed here completes one orbit each day. Because this orbit lies above the equator and moves in the direction of the earth's rotation, it appears stationary. The Georgetown Space Law Group, *The Geostationary Orbit: Legal, Technical and Political Issues Surrounding Its Use in World Telecommunications*, 16 CASE W. RES. J. INT'L L. 223, 230 (1984); Gorove, *The Geostationary Orbit: Issues of Law and Policy*, 73 AM. J. INT'L L. 444, 445 (1979); Theis, *The International Legal Code for Geostationary Radio Satellites*, 29 GERMAN Y.B. INT'L L. 227, 227 (1986); Wiessner, *The Public Order of the Geostationary Orbit: Blueprints for the Future*, 9 YALE J. OF WORLD PUB. ORD. 217 (1983).

12. Three satellites can provide continuous coverage of the entire earth's surface. If a different orbit were utilized, more satellites would be needed to cover the same area, and these would require regular adjustment. Consequently, the geostationary orbit offers the least expensive and most effective alternative. See Theis, *supra* note 11, at 227.

way. DBS, however, can also be threatening to receiving states, especially developing countries, which justifiably fear that technological developments like DBS will intensify the monologic and one-sided interactive process that is now a feature of international communications. There are two reasons for this: (1) the technological and financial resources for DBS are (and will likely remain for the foreseeable future) in the hands of a few developed nations;¹³ and (2) other areas of information flow demonstrate that the monopoly of technological and financial resources of information has been accompanied by an unbalanced flow of information both quantitatively (in terms of volume of flow) and qualitatively (in terms of selection and interpretation of events).¹⁴ Without an interna-

13. "The costs of a DBS system are high, so high that in the foreseeable future only wealthy countries will be able to afford this new broadcasting technique." Magiera, *Direct Broadcasting by Satellite and a New International Information Order*, 24 GERMAN Y.B. INT'L L. 288, 297 (1981). See also *Reports of the Working Group on DBS*, *supra* note 5, at 3.

14. The quantitative imbalance in international news flow is highlighted by the fact that the four largest Western news agencies (Associated Press, Agence France-Presse, Reuters, and United Press International) produce and disseminate between eighty and ninety percent of the world's news. Only about twenty to thirty percent of this news focuses on developing countries, although seventy-five percent of humankind lives in these countries. See Masmoudi, *The New World Information Order*, 29 J. COMM. 172, 173 (1979). Given this disparity in the flow of news between developed and developing countries, one observer has noted that "much more news flows from the industrialized world to the developing world than the other way, and much more international news of the industrialized world occupies space in the Third World media than the other way." Samarajiwa, *Third World Entry to the World Market in News: Problems and Possible Solutions*, 6 MEDIA, CULTURE AND SOCIETY 119, 127 (1984). Because the pool out of which they get their supply of "news" is so limited, developing countries read and hear more about developed countries than they do about other developing countries, and sometimes even about themselves. See Larson, *U.S. Television Coverage on Foreign News*, in WORLD COMMUNICATIONS: A HANDBOOK 112 (G. Gerbner & M. Siefert eds. 1984) [hereinafter WORLD COMMUNICATIONS].

The quantitative disparity is not limited to news. The flow of television programs, movies, and magazines shows the same tendency. See generally Tracey, *The Poisoned Chalice? International Television and the Idea of Dominance*, 114 DAEDALUS No. 4, 17 (1985); Varis, *The International Flow of Television Programs*, 34 J. COMM. 143 (1984). The disparity is even more glaring in the area of transnational advertising. Janus, *Transnational Advertising: The Latin American Case*, in WORLD COMMUNICATIONS, *supra* at 137; Rancagliolo, *Advertising, Mass Media and Dependency*, DEV. DIALOGUE 81 (1979); see also C. MEDAWAR, *INSULT OR INJURY? AN INQUIRY INTO THE MARKETING AND ADVERTISING OF BRITISH FOOD AND DRUG PRODUCTS IN THE THIRD WORLD* (1979). Finally, the relatively new field of informatics shows similar signs of imbalance. Bortnick, *International Information Flow: The Developing World Perspective*, 14 CORNELL INT'L L.J. 333, 335 (1981); see also IBI, *INFORMATICS IN THE SERVICE OF THE NEW INTERNATIONAL ECONOMIC ORDER* (1979).

tional agreement regulating DBS transmission, developing countries fear that the power of getting to the homes of citizens of other countries is likely to be utilized effectively by the disseminator to undermine any government or society of which the disseminator does not approve or perceives as a threat. Given that television pictures leave an intense impression on the receiver, and considering the absence of the relative mutuality and reciprocity present in radio broadcast, the fear of developing nations is real and warranted.

B. *Geopolitical Considerations*

The increasingly prevalent attitude of the superpowers that the world must be understood as an extension of themselves, intensifies developing nations' concern over interstate propaganda. This perception often leads to characterizing the aspirations of individual developing countries, or even their collective demand, as being instigated by one or the other superpower and hence as nothing more than a reflection of the current interest of that superpower.¹⁵ Consider, for example, the Western nations' response, and especially that of the United States, to the developing nations' demand for a reconstitution of the international communication process. Private and public institutions in this country have long viewed this demand as another of Moscow's tactics to use these countries to push for international legalization of its authoritarian and restrictive concept of communication.¹⁶ The legitimate concern of developing countries over the quantitative and qualitative imbalance in international information flow was simply reduced to another manifestation of Moscow's evil design. Consider also how the superpowers characterize struggles for nation-building in Central America and Southern Africa: They are seen not as genuine efforts for self-determination and nation-building in light of the unique historical conditions that define their pre-

The qualitative imbalance that worries developing countries arises in the context of the nature of their entry as sources of news. Of the twenty to thirty percent of total news coverage that concerns developing countries, the majority is ill-informed, sensational, and dwells almost exclusively on exceptional issues like corruption, coups, and disasters. Potter, *News From Three Worlds in Prestige U.S. Newspapers*, 64 JOURNALISM Q. 73 (1987); see also A. SMITH, *THE GEOPOLITICS OF INFORMATION: HOW WESTERN CULTURE DOMINATES THE WORLD* (1980).

15. See Valcourt, *Plausible Deniability and Waging War*, 1 INT'L J. OF INTELLIGENCE AND COUNTERINTELLIGENCE No. 3, 119 (1987) (reviewing J. PRADOS, *A REVIEW OF PRESIDENTS' SECRET WARS* (1987)).

16. "It is in the Third World that the war for international supremacy is being fought by the two superpowers. . . ." *Id.* at 122.

sent, but rather as arenas of superpower contention.¹⁷ Simply put, the superpowers confront the struggles in the various parts of the developing world by deciding who they are for, rather than who they are.

Given the bipolar lens through which the superpowers view the world, developing countries legitimately believe that if powerful communication technologies like DBS are not regulated on the international level, they will be utilized to undermine them. Consider the likely result if the United States Government were able to reach directly the homes of Nicaraguan citizens via the DBS equivalent of Radio Marti.¹⁸ What would it tell those citizens? How would it characterize the Nicaraguan Government? And what action would it recommend that Nicaraguan citizens take?

The urgent concern about unregulated international propaganda is thus informed by the emergence of two contradictory tendencies: (1) the internationalization of social life, ushered in by new and powerful communication technologies; (2) and the parochialization of international politics.¹⁹ The combination of the two leaves developing countries highly

17. For example, one might argue that the Reagan Administration's policy toward Angola, Mozambique, and Zimbabwe is informed not by the social and political conditions out of which these states are trying to build nations, but by the perceived role of the Soviet Union in the region. The Reagan Administration warmly embraces and supports Jonas Savimbi's guerrilla force fighting to overthrow the Angolan Government not for its positive political program, but simply because it is seen to negate the alleged Soviet influence in that country.

18. Radio Marti is a United States-funded radio station established by Congress in September 1983 and devoted to broadcasting the "truth" about the Cuban Government to the Cuban people. See Radio Broadcasting to Cuba Act, 22 U.S.C. § 1465 (Supp. IV 1986). Radio Marti is modeled after Radio Free Europe and Radio Liberty, stations which are considered children of the cold war. Radio Free Europe broadcasts to Eastern Europe from its headquarters in Munich, West Germany, while Radio Liberty beams programs in eleven dialects into the Soviet Union. See Uttaro, *The Voices of America in International Radio Propaganda*, 45 LAW & CONTEMP. PROBS. NO. 1, 103 (1982); see also WORLD RADIO TV HANDBOOK (1988). Serious journalists and broadcasters regard Radio Free Europe and Radio Liberty as little more than instruments of propaganda in the cold war battle.

Radio Marti is similarly designed as a cold war station, to accomplish in Cuba what the other two stations have been doing in relation to Eastern Europe and the Soviet Union. As former National Security Adviser Richard V. Allen explained, the station was created to "tell the truth to the Cuban people about their government's domestic mismanagement and its promotion of subversion and international terrorism in this hemisphere and elsewhere." Feltman, *Voice of America's New Radio Station to Cuba*, 8 FLETCHER F. 81, 82 (1984).

19. "International life and politics today are marked by two parallel tendencies that complement each other and to some degree overlap. One can be called the globalization of international problems, and the other regionalization." Varis, *Trends in International*

vulnerable. One commentator put this concern well:

We must recognize that despite our earlier hopes broadcasting has not turned out to be the means of international understanding that we once imagined it might be. On the contrary (and speaking particularly of television), broadcasting today seems to have turned inwards and become the instrument of increased nationalism. Our screens do not reflect the pulse of the world events, but rather the feeble beats of life at home, and when we get the occasional glimpse of larger issues, they tend to be seen from a selfish, national viewpoint.²⁰

C. *Informational Independence as a Prerequisite for Self-Determination*

The developing nations are increasingly aware of the fact that the process of self-determination cannot be fully realized by political and economic independence alone: to be meaningful it must also encompass socio-cultural, or informational, self-determination. It is becoming increasingly clear to these countries that having a national government, a flag, a national anthem, a seat in the United Nations, and even a national banking system are, although necessary conditions, insufficient to achieve complete self-determination. Political and economic self-determination must be closely followed by socio-cultural self-determination. This perception emerges from the realization that channels of communication and messages can be as much a part of the structure of domination as are military forces, administrative apparatuses, and the structure of the international banking system.²¹ In other words, a community's consciousness about its identity, and how that identity is shaped, is as much a part of its independence as are political and economic conditions. How a community sees itself and how it is seen by others (which in turn affects how it sees itself) help define the identity of that community—its aspirations, priorities, and agenda. Consequently, the struggle for the constitution of one's identity is at the center of the debate.

Television Flow, 7 INT'L POL. SCI. REV. 235 (1986).

20. D'Arcy, *Broadcasting in the Global Village*, 43 COMBROAD 1-2 (1979). The truth of D'Arcy's observation is reflected in a statement made by Representative Edward J. Derwinski during a committee hearing on appropriation for Radio Free Europe and Radio Liberty. Derwinski argued that international broadcasting was a "radio war" with the Soviet Union." H.R. REP. NO. 971, 96th Cong., 2d Sess. 22, 23 (1980).

21. "Imperialism, whether military, economic, cultural or informative, is contrary to an organization of states which is based on the principle of sovereign equality of all its members, as art. 2, para. 1, of the United Nations Charter emphasizes." Mągiera, *supra* note 13, at 304.

From this last perspective, developing countries' concern about international propaganda is merely an aspect of their shared suspicion about the entire international structure and the process through which information flows and within which communication resources are distributed²²—which they consider highly concentrated and monologic.

IV. INTERNATIONAL REGULATION OF PROPAGANDA

International law has always purported to be conscious of the negative impact of unimpeded propaganda across national borders²³ and has, at least theoretically, attempted to provide for some form of regulation. The League of Nations sponsored the first multilateral effort to regulate peacetime propaganda in the 1936 International Convention Concerning the Use of Broadcasting in the Cause of Peace (1936 Broadcasting Convention).²⁴ Although various nations and international organizations pre-

22. During the last decade, developing countries have expressed this concern by advocating the creation of a New World Information and Communication Order (NWICO) which, they hope, will be much more sensitive to their communications and informational needs. *See, e.g.,* Venezuelan Resolution, UNESCO, Doc. 21C/DR.264 (1980). The movement has encountered stiff resistance from the developed countries and is currently dormant.

Three international materials in particular comprise NWICO: (1) *Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War*, 20 UNESCO Gen. Conf., UNESCO Doc. 20C/20 Rev. (1978) [hereinafter *Mass Media Declaration*]; (2) INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATION PROBLEMS, *MANY VOICES, ONE WORLD: COMMUNICATION AND SOCIETY, TODAY AND TOMORROW* (1980) [hereinafter *MANY VOICES, ONE WORLD*]; and (3) *International Programme for the Development of Communication* (IPDC), UNESCO Res. 4/21, 21 UNESCO Gen. Conf., (1980).

23. Some have rejected this general condemnation of propaganda, arguing that propaganda often averts more serious methods of confrontation, such as economic pressure or outright war. In effect, these commentators assert that propaganda helps take the steam off the boiling kettle of international relations. *See* Falk, *On Regulating International Propaganda: A Plea for Moderate Aims*, 31 *LAW & CONTEMP. PROBS.* 622, 634 (1966) ("Hostile propaganda directed at the third world may restrict great-power conflict to mutually tolerable limits."). This proposition fails for two reasons. First, empirical evidence indicates that propaganda may actually *induce* rather than avert conflict. *See* Larson, *The Present Status of Propaganda in International Law*, 31 *LAW & CONTEMP. PROBS.* 439, 439-40 (1966) (noting the intense propaganda campaign preceding the First World War). Second, the proposition ignores the fact that propaganda is as coercive (and perhaps even more so), for its objective is the negation of the very constitution of the individual: his or her capacity as a thinking being.

24. *International Convention Concerning the Use of Broadcasting in the Cause of Peace*, Sept. 23, 1936, 186 L.N.T.S. 301 [hereinafter *1936 Broadcasting Convention*].

viously had endeavored to come to grips with both the nature of propaganda and the appropriate mode of its regulation,²⁵ the 1936

Twenty-eight states signed the Convention: Albania, Argentina, Austria, Belgium, Brazil, Chile, Colombia, Czechoslovakia, Denmark, the Dominican Republic, Egypt, Estonia, France, the United Kingdom of Great Britain and Northern Ireland, Greece, India, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Rumania, Spain, Switzerland, Turkey, the Soviet Union, and Uruguay. The United States never joined the League of Nations and thus did not sign the 1936 Broadcasting Convention.

25. Since the French Revolution, states have generally agreed that customary international law prohibits the dissemination of hostile propaganda between nations. Van Dyke, *The Responsibility of States for International Propaganda*, 34 AM. J. INT'L L. 58, 58-59 (1940). This, however, did not restrain some states from engaging in the act. Following the French Revolution, for example, France spread official propaganda about other countries and in turn was itself a victim of propaganda. *Id.* at 63-64.

With respect to private propaganda, however, no such general agreement existed. The state's responsibility to suppress private propaganda by its citizens across the border of another nation, and to punish those who purvey it, has been claimed as a norm of customary international law on many occasions. France cited this principle in 1802 during a dispute with Great Britain; Germany did likewise in the 1870s in relation to the activities of the Catholic bishops in France and Belgium; Japan did the same in the course of its protest against the Chinese government's toleration of propaganda against it; and even the United States, which traditionally allows no governmental control over private expression, placed responsibility on the Soviet Government for anti-American propaganda disseminated by private entities, groups, or persons. In each of the instances above, the accused party denied that it had any responsibility under international law. *Id.* at 65-68.

One of the earliest attempts to regulate propaganda under an international convention occurred in 1907 with the adoption of the Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, Oct. 18, 1907, 36 Stat. 2310, T.S. No. 540. Article 3, for example, prohibited belligerents from establishing and employing telegraph stations on neutral territory for use as a means of communication. *Id.*, 36 Stat. at 2322-23. Article 5 required neutral countries to punish such acts when they occurred within their territories. *Id.*, 36 Stat. at 2323. In the United States, the Wilson Government accepted the provisions of this treaty and, through executive orders, prohibited the transmission of "unneutral" messages across the Atlantic and required that all stations with the capacity for transatlantic transmission be placed under governmental control. *See* Act of Aug. 13, 1912, 47 U.S.C. §§ 51-60 (repealed 1927). The United States' agreement to control propaganda at this time, while contrary to its general promotion of unfettered communication, may be explained by the fact that the wartime emergency necessitated a close monitoring of interstate communications. *See de Wolf, Telecommunications and Neutrality*, 30 AM. J. INT'L L. 117, 120 (1936).

During the interim between the 1907 Hague Convention, *supra*, and the 1936 Broadcasting Convention, *supra* note 24, states dealt with propaganda mainly as a bilateral issue and usually addressed it as a section of a bilateral treaty. *See, e.g.*, Treaty of Neutrality and Non-Aggression, June 24, 1931, Afghanistan-U.S.S.R., art. 3, 157 L.N.T.S. 371, 379-80; Supplementary Agreement to the Treaty of Rapallo, Nov. 5, 1922, Germany-U.S.S.R., art. 7, 26 L.N.T.S. 387, 394. *See also Exchange of Communications*

Broadcasting Convention still provides the most useful point of departure for it is the most comprehensive and perhaps the most systematic thus far. Indeed, it continues to provide the mode of discourse both about the nature of international propaganda and the desirability or necessity of its regulation.

The 1936 Broadcasting Convention ostensibly offered a firm foundation for the international cooperation needed to curb the spread of propaganda across national boundaries. Article 1 required the signatory parties:

to prohibit and, if occasion arises, to stop without delay the broadcasting within their respective territories of any transmission which . . . is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party.²⁶

Article 3 extended the prohibition to "statements the incorrectness of which is or ought to be known to the persons responsible for the broadcast" and required parties to the convention to ensure that such "incorrect statements shall be rectified at the earliest possible moment by the most effective means, even if the incorrectness has become apparent only after the broadcast has taken place."²⁷

The above provisions did not distinguish between private and public communications and generally charged the signatory states with the responsibility to control and regulate such propaganda emanating from within their territorial jurisdictions.²⁸ Unfortunately, the document did not contain an enforcement mechanism to compel compliance by delinquent states.²⁹ With that knowledge, and in anticipation of the likelihood

between the President of the United States [Franklin D. Roosevelt] and Maxim M. Litvinov People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics (White House press release), reprinted in 28 AM. J. INT'L L. 2, 3 (Supp. 1934) (agreeing not to engage in hostile propaganda). For a survey of such agreements, see Downey, *A Historical Survey of the International Regulation of Propaganda*, 1984 MICH. Y.B. INT'L LEGAL STUD. 341, 342-45.

26. 1936 *Broadcasting Convention*, *supra* note 24, art. 1.

27. *Id.* art. 3.

28. Article 1 narrowly defined propaganda as information likely to incite the population of a country to act contrary to the security of that state. *Id.* art. 1.

29. Article 7 provided that any dispute regarding the interpretation of the Convention would be reviewed through international arbitration or judicial settlement in the absence of any provisions in force between the states concerning the settlement of international disputes. If the parties did not agree on the forum for dispute settlement, then either party could request that the case go before the Permanent Court of International Justice (PCIJ) provided that the disputants were parties to the Protocol regarding the

of breach, some states reserved the right to retaliate against propaganda by jamming the proscribed broadcast.³⁰

Some regional conventions concluded in the 1930s reinforced the provisions of the 1936 Broadcasting Convention. In 1935, for example, the Organization of American States (OAS) adopted the South American Regional Agreement on Radiocommunications, in which contracting states pledged to control the sources and accuracy of information broadcasted, to avoid hostile propaganda, and to refrain from participating in political and social movements in any member state.³¹ Parties to this agreement also concluded conventions in 1937³² and 1940³³ prohibiting the dissemination of false news, information that disturbed peaceful relationship among members, and communications that offended national sentiment.

Neither the 1936 Broadcasting Convention nor the above regional conventions enjoyed a healthy or long existence. Efforts to develop systematic regional and international responses to propaganda crumbled under the pressure of the intense propaganda war that preceded World War II. It was, therefore, not until after World War II that the search for effective international agreements regarding propaganda began.

While the United Nations Charter, which was adopted in 1947, does not specifically mention propaganda, its drafters arguably had propaganda in their thoughts when they constructed article 39. The article

Statute of the Court. *Id.* art. 7.

Most members knew, however, that this was not an adequate enforcement mechanism. First, the delinquent party might use the choice of forum to delay or even avoid dispute settlement institutions. Second, even if the parties agreed on the forum, the length of time required for the decision of the international institutions (especially the PCIJ) would be so inordinately long that, by the time a judgment was rendered, its practical usefulness might be negligible. Third, even if the arbitral or judicial determinations were of some practical value (for example, if the offending act were still continuing and the arbitral or judicial institution called for its cessation), no mechanism could force the delinquent party to carry out the order. *See id.*

30. Belgium, Spain, and the Soviet Union made that reservation. *See 1936 Broadcasting Convention, supra* note 24, 186 L.N.T.S. at 314-17.

31. South American Regional Agreement on Radiocommunications, April 10, 1935, *reprinted in* 7 M. HUDSON, INTERNATIONAL LEGISLATION 47, 51-52 (1941) (treaty not registered with the League of Nations); *see also* Whitton, *The Problem of Curbing International Propaganda*, 31 LAW & CONTEMP. PROBS. 601, 609-10 (1966).

32. South American Regional Agreement on Radiocommunications (Revised), June 20, 1937, *reprinted in* 7 M. HUDSON, *supra* note 31, at 767, 769-70.

33. South American Agreement on Radiocommunications, Jan. 17, 1940, *reprinted in* 8 M. HUDSON, INTERNATIONAL LEGISLATION 447 (1949) (noting minor changes in South American Regional Agreement on Radiocommunications (Revised), *supra* note 32).

empowers the United Nations Security Council to determine the existence of, and consider appropriate measures to defuse, peace threatening situations.³⁴ Both disinformation (intentionally false information) and distorted information (selectively false information) may be considered peace threatening activities if the disseminator intends them to be hostile or subversive and they are so perceived by the intended victim. Thus, one may argue that article 39, read in conjunction with article 2(4)³⁵ contemplates the regulation and management of interstate propaganda.

Two major international human rights documents place further restrictions on the dissemination of propagandistic information. Article 29(2) of the Universal Declaration of Human Rights gives states the right to regulate information for the purpose of securing "public order."³⁶ Article 19(3) of the International Covenant on Civil and Political Rights similarly provides that states may restrict information flow to maintain and protect national security or public order ("order public").³⁷ Only article 20 of that covenant, however, specifically refers to propaganda.³⁸

The repudiation of propaganda designed or having the capacity to provoke or encourage any threat to peace may thus be seen as an internationally recognized norm. This is true not only because of the well accepted norms that prohibit the threat or use of force³⁹ and the direct prohibition of propaganda in article 20 of the International Covenant on Civil and Political Rights,⁴⁰ but also because the United Nations has

34. "The Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." U.N. CHARTER art. 39. *See also id.* art. 1, para. 1 (listing as part of the purpose of the United Nations the maintenance of "international peace and security . . . [and] the prevention and removal of threats to the peace").

35. Article 2 provides: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . ." U.N. CHARTER art. 2, para. 4.

36. Universal Declaration of Human Rights, art. 29, para. 2, G.A. Res. 217, 3 U.N. GAOR 74, U.N. Doc. A/810, at 77 (1948).

37. International Covenant on Civil and Political Rights, *entered into force* March 23, 1976, art. 19, para. 3, G.A. Res. 2200A, 21 U.N. GAOR Supp. (no. 15) at 55, U.N. Doc. A/6316 (1967).

38. Article 20 prohibits "propaganda for war" or "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." *Id.* art. 20.

39. *See* U.N. CHARTER, art. 2, paras. 3-4; *see also Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. U.S.) 1986 I.C.J. 14 (enunciating rules of customary international law).

40. International Covenant on Civil and Political Rights, *supra* note 37, art. 20.

declared repeatedly (and often unanimously) that such propaganda must be prohibited. In 1947, for example, the United Nations General Assembly unanimously adopted a resolution condemning all forms of propaganda "designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression."⁴¹ These same words later appeared in another United Nations Resolution entitled "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space"⁴² and also in the 1966 Outer Space Treaty.⁴³ States are also prohibited from employing propaganda for war or aggression in the now famous 1970 General Assembly resolution, "Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations."⁴⁴

Finally, some regional agreements reinforce this principle of international law. Specific examples include article 13 of the American Convention on Human Rights, which denounces propaganda promoting war and makes such propaganda a candidate for prior censorship,⁴⁵ and the 1975 Helsinki Final Act, which places on states a duty to refrain from

41. G.A. Res. 110, U.N. Doc. A/519, at 14 (1987).

42. G.A. Res. 1962, 18 U.N. GAOR Supp. (No. 15) at 15; U.N. Doc. A/5515 (1964).

43. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *opened for signature* Jan. 27, 1967, 18 U.S.T. 2410, 2412, T.I.A.S. No. 6347, 610 U.N.T.S. 205, 207.

44. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 18) at 124, U.N. Doc. 2/8082 (1970).

45. American Convention on Human Rights, Nov. 22, 1969, art. 13, O.A.S.T.S. No. 36 (entered into force July 18, 1978), *reprinted in* INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 190.1, 190.5-.6 (R. Lillich ed. 1986). *See also* Charter of the Organization of American States, art. 15, April 30, 1948, 2 U.S.T. 2394, 2419-20, T.I.A.S. No. 2361, 119 U.N.T.S. 48, 56. Article 15 provides:

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.

Id. Article 16 further provides: "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind." *Id.* art. 16, 2 U.S.T. at 2420, T.I.A.S. No. 2361, 119 U.N.T.S. at 56. Under the Rio Treaty, intervention through propaganda is also considered aggressive if the propaganda affects the inviolability or the integrity of a member's territory, or its sovereignty or political independence. *See* Inter-American Treaty of Reciprocal Assistance (Rio Treaty), *opened for signature* Sept. 2, 1947, 62 Stat. 1681, 1701 T.I.A.S. No. 1838, 21 U.N.T.S. 77, 97-99.

propaganda for wars of aggression.⁴⁶

It is with the background of the above normative statements that the provision of the UNESCO Mass Media Declaration⁴⁷ should be understood. This document, which has become a very important component of the New World Information and Communication Order (NWICO), recognizes the important contributions of the mass media both in countering incitement to war and in strengthening peace and international understanding.⁴⁸ In fact, the Mass Media Declaration repeatedly emphasizes the necessity of avoiding or restraining communicative actions that are intended to, or have the functional consequence of, inciting war and aggression and generally disturbing the peace. It is in this sense that some have argued that there is nothing drastically new about the Mass Media Declaration, for it merely collects together and systematically presents existing norms of international law that, until now, have been scattered over many documents and declarations.⁴⁹

All in all, one can safely conclude that the prohibition against propaganda having the capacity to provoke war or, in a general sense, disturb peace has been reaffirmed often as a norm of international law. Such propaganda may appear in various forms: the direct incitement of war (for example, by advocating the overthrow of the existing internal political order); the controlled use of information to revile and degrade the institutions or agents of a community to such a level that the likely result is a serious breakdown of peaceful coexistence between the states concerned; or the deliberate placement of false information, which often produces unpredictable consequences for relationships among communities. These prohibitory constructs all seem directed to one major goal: the maintenance of "minimum public order."⁵⁰

46. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, reprinted in 14 I.L.M. 1292, 1297 (1975).

47. *Mass Media Declaration*, *supra* note 22.

48. *See id.* art. 1; art. 2, para. 3; and art. 3, para. 1.

49. "This instrument [the Mass Media Declaration] only appeared to place qualitatively new elements on the agenda of international communications and politics; in fact, it was only a collection of norms and principles, most of which already had been enunciated in U.N. documents and indeed in international law. The only major innovation to the credit of UNESCO was that the declaration brought together the various standards scattered throughout earlier instruments." Nordenstreng, *Defining the New International Information Order*, in *WORLD COMMUNICATIONS*, *supra* note 14, at 30.

50. For a description of "minimum public order," see M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 1-36 (1961). For similar views of the regulation and management of propaganda as a major objective of the maintenance of minimum public order, see B.S. MURTY, *PROPAGANDA AND WORLD PUBLIC ORDER* 142-81 (1968); O'Brien, *International Propaganda and Minimum World Pub-*

This Article, however, will do more than simply restate what have been accepted as principles of international law against some forms of propaganda. Rather, it will shift the discussion of propaganda away from its general preoccupation with simply minimizing the possibility of war and explicit coercion to one of promoting national self-determination.⁵¹ In so doing, the Article seeks to achieve two goals. First, it will extend the notion of propaganda to include distorted or selectively false information that may potentially result in the structural negation of national or communal capacity for self-determination. Second, the Article will suggest that establishing self-determination as a legal construct will broaden the utility of international propaganda restraints beyond those situations included under the concern for minimum public order, thereby enhancing the ability to see the rights of both the victim and target audiences in a positive rather than a negative way. The prohibition of propaganda, thus, will do more than help ensure that precarious balance in peace is maintained. It will recognize that propaganda is manipulative, anti-dialogic, and geared toward domination and conquest.⁵²

lic Order, 31 LAW & CONTEMP. PROBS. 589 (1966).

51. Broadly defined, self-determination in international law refers to a people's right to constitute its community without external interference, and to participate freely and fully in all spheres of community life (whether the relevant community is defined to be national or international). Thus, self-determination has two aspects: the right of participation as well as the right of constituting the community within which such participation is possible. Put simply, self-determination is the negation of political, economic, and cultural domination and conquest.

Self-determination is an important normative principle enshrined in the U.N. Charter, *see* U.N. CHARTER arts. 1, 55-56; and in the International Covenant on Civil and Political Rights, *see supra* note 37, art. 1; and is accepted by the U.N. itself, *see, e.g.*, Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No.18) at 121-24 U.N. Doc. A/8018 (1970). Most prominent scholars likewise share this view. *See, e.g.*, I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 513 (3d ed. 1979); U. UMOZURIKE, SELF-DETERMINATION IN INTERNATIONAL LAW 271 (1972); Reisman, *The Case of Western Somaliland: An International Legal Perspective*, 1 HORN OF AFRICA 13, 18 (1978).

52. Domination is achieved by the denial to the audience of accurate and balanced information upon which it can make rational decisions. Propaganda is geared toward conquest because, by its very nature, it attempts to transform individuals and groups (namely, the audience) from acting, thinking and self-reflecting beings into "things" that can be molded according to the interest of the propagandist. The only relationship that exists between the propagandist and his audience is one of domination and conquest. For an interesting formulation of anti-dialogic actions with domination and conquest, *see* P. FREIRE, PEDAGOGY OF THE OPPRESSED 60-65, 96-150 (1970).

V. SELF-DETERMINATION AND PROPAGANDA

As noted above, propaganda may include both intentionally false and selectively false information. The disseminator may employ propaganda to undermine the legitimacy of social and political institutions. Even absent such malevolent desires, however, the functional consequence may be the same—the structural negation of self-determination.

In addition to the firm legal foundation supporting the prohibition against propaganda, the concept of self-determination could also be employed to make propagandistic communication impermissible. This is because any explicitly coercive communication that intentionally and selectively disseminates false information with the explicit goal of unilaterally and manipulatively altering the cultural and socio-political structures of communities is a direct negation of those communities' right to determine their cultural, social, and political affairs according to their needs, aspirations, and current conditions. The possession of accurate information is clearly the minimum condition for the actualization of self-determination.

This section will explore two areas of propaganda that have never attracted sufficient inquiry. Part A will outline one type of intentionally false propaganda, disinformation, and consider its effects upon national and communal self-determination. Part B will then analyze structural propaganda, again with a view toward the deleterious effects of selective information upon self-determination.

A. *Disinformation*

Disinformation is a term applied to the process of spreading or implanting false information about individuals, groups, organizations, or nations by a party that typically conceals its identity by attributing the information to another source.⁵³ Adopted in 1955 from the Russian word *dezinformatsia*,⁵⁴ disinformation is distinguished from other forms of in-

53. "Intelligence operations and propaganda can generally be grouped into three categories; white, black, and gray. White are openly attributed and refer to acknowledged government positions, policies, and statements. . . . Black operations are falsely attributed; they may include planting false stories, surfacing forgeries, and broadcasting radio programs from clandestine transmitters. Gray affairs fall somewhere in between and include the use of front groups, local communist parties or media manipulation." *Hearings on Soviet Active Measures*, *supra* note 8, at 48 (statement of C. Thomas Thorne, Jr., Deputy Assistant Secretary for Coordination, Intelligence, and Research, Department of State). This section will focus on "black" propaganda, better known as disinformation.

54. See R. SHULTZ & R. GODSON, *DEZINFORMATSIA: ACTIVE MEASURES IN SO-*

tentional propaganda, as well as structural propaganda, primarily because the disinformant conceals its identity.⁵⁵ The disinformant, usually a state agency although sometimes private media, often employs forged documents to support its disinformation enterprise. These forgeries run the gamut from letters to telegrams to manuals.

Disinformation also should be distinguished from misinformation. While the former pertains to outright lying and concealing of sources, the latter involves wrongly or badly informing. With disinformation, truth is deliberately and totally displaced by falsehood. On the other hand, with misinformation, truth is not conveyed accurately, but the inaccuracy is not intentional.

Although disinformation is most often used by the two superpowers to undermine each other's position vis-à-vis their respective allies and other governments, disinformation also adversely affects the capacity of other communities (mainly developing countries) to strengthen the social, cultural, economic, and political components of nationhood. Disinformation hinders developing countries' capacity for self-determination in two ways. First, even when the superpowers use disinformation to undermine each other's position, they quite often use weak and vulnerable countries as their bases of operation, treating them as manipulable objects through which foreign policy is conducted. Second, developing countries are often direct targets and victims of disinformation, especially when they are seen to be either unfriendly or too independent in their perceptions and appraisals of their needs and priorities.

Both of the above objectives have been pursued numerous times. Yet specific instances of disinformation seldom are proved because highly sophisticated means are used to attribute the information to fraudulent sources and because most developing countries lack sufficient resources to track down and reveal the true source. Consequently, most of the false information must remain either believed as true or on a level of unverifiable suspicion. Nevertheless, a few well-known examples indicate how the process works.

One well-known case arose during the destabilization of the Allende Government in Chile. The United States Central Intelligence Agency (CIA) continually utilized local media, especially the major conservative Santiago daily newspaper, *El Mercurio*, to plant false information about both the condition of the economy and the relationship between the army and the Chilean Government. These conditions ultimately developed in the way the CIA alleged and desired, finally leading to the bloody over-

VIET STRATEGY 2, 36-37 (1984).

55. *Id.*

throw of Allende.⁵⁶

Angola was another target of CIA disinformation during the 1970s. John Stockwell, a former CIA official who served as the Chief of the Angola Task Force, details the Angolan operation in his book, *In Search of Enemies*.⁵⁷ Stockwell cites one incident in which CIA officers in Kinshasa, Zaire fabricated a story about Cuban soldiers raping Angolan women and killing babies. The CIA sought to discredit the Cuban troops who were aiding the Angolan Government.⁵⁸ The story received fairly extensive coverage by international news agencies, including the Associated Press and United Press International, and was reported in many papers.

Nicaragua has been another victim of superpower disinformation. Alexander Cockburn reports that on the night of the 1984 United States election, the White House leaked information to a reporter about an alleged shipload of Soviet Mig fighters nearing Nicaragua. This false information might have had the desired effect of diverting the United States press from covering the Sandinista Government's first election, which was taking place at the time of the United States election.⁵⁹ In addition, the Reagan Administration's repeated charge that the Sandinista Government traffics drugs is now accepted as another endeavor to disseminate false information to rally the United States public in support of the administration's policy toward the Sandinistas.

The CIA and the United States Government do not have a monopoly on destabilizing and eventually undermining developing countries and

56. See *Hearings Before the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities: Covert Activities*, 94th Cong. 1st Sess. (1976) [hereinafter *Church Committee Hearings*]; Borosage & Marks, *Destabilizing Chile*, in *THE CIA FILE 79-89* (1976); Landis, *CIA Media Operations in Chile, Jamaica and Nicaragua*, 16 *COVERT ACTION: INFO. BULL.* 32-43 (1982).

According to the Senate Select Committee Report, the CIA spent \$8 million for propaganda and other activities on behalf of friendly political parties. The CIA spent another \$4,300,000 on producing and disseminating propaganda and supporting mass media. *Church Committee Hearings, supra* at 37. "The covert propaganda efforts in Chile also included 'black' propaganda. In the 1970 election of Chile, for instance, the CIA used 'black' propaganda to sow discord between the Communists and the Socialists and between the National Labor Confederation and the Chilean Communist Party." S. KUMAR, *CIA AND THE THIRD WORLD: A STUDY IN CRYPTODIPLOMACY* 148 (1981).

57. J. STOCKWELL, *IN SEARCH OF ENEMIES: A CIA STORY* (1978).

58. *Id.* at 195. The Reagan Administration reportedly engaged in a similar series of disinformation tactics from 1981 until 1986 in order to destabilize the Libyan Government and ultimately to justify the bombing of that country. See Cockburn, *Is Press Awakening to Reagan's Deceptions?*, *Wall St. J.*, Nov. 13, 1986, at 33, col. 3.

59. *Id.*

using them as pawns in the "great tussel" between the superpowers. The Soviet K.G.B. (and indeed the entire Soviet machine) does it as well, if not better. For the Soviets, disinformation is part of a total strategy called "active measures," which is a literal translation from the Russian phrase *aktivnyye meropriyatiya*. This refers to a range of operations intended to affect other nations' policies, as distinct from conducting intelligence and counter-intelligence activities.⁶⁰ These activities include disinformation, manipulation of media in foreign countries, and the use of groups and institutions in other countries.⁶¹

One prominent example of Soviet disinformation concerned Pakistan's American-run Malaria Research Center in Lahore. In 1982, the Soviet paper *Literaturnaya Gazeta* reported that it had evidence that the program was actually a CIA-financed plot to breed special mosquitoes "which infect their victims with deadly viruses as part of U.S. plans to introduce biological warfare into Afghanistan."⁶² *Tass*, the official Soviet news agency, carried the report, which was also featured in such papers as *The Times of India* and the Pakistani daily *Jang*.⁶³

Another incident involved a forged dispatch from the German Embassy in Accra, Ghana, which reported an alleged conversation between the German Ambassador and his American counterpart. In the dispatch, the German Ambassador quotes the American Ambassador, who allegedly complained that his intelligence service had taken too long to carry out its mandate of overthrowing the Ghanian Government of Jerry Rawlings.⁶⁴ This dispatch appeared in the Ghanian press and was a source of tension between the two countries. One may surmise that East German officials forged the dispatch, one suspects with a request from the Soviet Union.

In 1985, a forged letter purportedly from the American general in charge of the Inter-American Defense Board to President Pinochet of

60. *Hearings on Soviet Active Measures*, *supra* note 8, at 47 (statement of C. Thomas Thorne, Jr., Deputy Assistant Secretary for Coordination, Intelligence and Research, Department of State).

61. *Id.*

62. U.S. Dep't St. *Soviet Active Measures: An Update, Special Report No. 101 3* (1982) [hereinafter *Special Report No. 101*], reprinted in *Hearings on Soviet Active Measures*, *supra* note 8, at 184. This disinformation is believed to be the Soviet response to a story (some would say disinformation) emanating from the United States that the Soviets were using "yellow rain" (chemical weapons referred to as T2trichothecene mycotoxins) in Afghanistan and supplying them for use in Laos and Kampuchea. *Id.*

63. *Id.*

64. See *Special Report No. 110*, *supra* note 8, at 5, reprinted in *Hearings on Soviet Active Measures*, *supra* note 8, at 215.

Chile surfaced in Rome. The letter thanked Pinochet for the planned deployment of Chilean military units in Honduras and El Salvador. An Italian journalist found the letter on his desk. The journalist contacted the relevant authorities, learned that it was a forgery, and did not publish it.⁶⁵ The K.G.B. has also used media in Third World nations to disseminate disinformation in its ongoing efforts to undermine its rival superpower.⁶⁶

The situations described above illustrate the method and extent of disinformation operations. Such occurrences are not unique; however, they highlight the type of incidents that unfortunately occur too frequently throughout the world. As noted above, although the superpowers utilize disinformation against one another directly or in their relationships with their allies,⁶⁷ developing countries are usually the victims of disinformation, both as direct targets of destabilization and as helpless pawns in the power struggle between the East and the West. There are three reasons for this. First, most developing countries do not possess the technological

65. *Hearings on Soviet Active Measures*, *supra* note 8, at 103 (testimony of Lucian Reichler, Chairman, Inter-Agency Working Group on Soviet Active Measures, Department of State).

66. Ilya Dzhirkvelov, a former K.G.B. employee who now lives in England, recently gave a glimpse as to how the K.G.B. goes about implanting disinformation. He specifically mentioned two "projects," one of which involved a developing country. The incident concerned a Peace Corps project in Africa. Because the project was improving the United States' standing in the region, the Soviets decided to undermine it. Dzhirkvelov claims that he used a Ugandan journalist to plant a story alleging that the Peace Corps in East Africa was the tool of the CIA. The report gained some credence, for one Peace Corps volunteer was apparently a retired member of the United States intelligence service. Engelberg, *K.G.B. Subversion Tactics Described*, N.Y. Times, Feb. 11, 1986, at A29, col. 4. The point here is not to dispute the possibility that the CIA used volunteers as informers. In all probability it did. Rather, one might simply observe that the K.G.B. did not have such information, and that it was prepared to make it up.

67. For example, in November 1981 a forged letter from President Reagan to King Juan Carlos of Spain informed the King that Spain must address two urgent problems: (1) left-wing pacifists and opposition groups; and (2) Spain's reluctance to join NATO. The message was deliberately expressed to offend Spanish nationalism. The forgery was circulated on Nov. 11, 1981 to all delegations (except those from the United States and Spain) of the Conference on Security and Cooperation in Europe then meeting in Madrid. Many Madrid papers ran the story and exposed the letter as a fabrication. *Special Report No. 101*, *supra* note 62, at 1, reprinted in *Hearings on Soviet Active Measures*, *supra* note 8, at 182. Numerous instances of forgeries have recently surfaced. For example, in 1982 a forged letter and an accompanying one page intelligence study purporting to be from William Clark, then Deputy Secretary of State, and dated shortly before the Greek general election, suggested the need for an alternative to the Papandreou Government, and alluded to a possible military coup in the event of Papandreou's reelection. *Id.*

or the financial capacity to discover the falsity of such dissemination before it occasions damage. Second, the precarious political and economic positions of most developing countries make them vulnerable to adverse influence and destabilization by such dissemination. Third, the plain fact that journalism in these countries is often an unremunerative profession provides the opportunity for the superpowers to use financial incentive to the press in those countries to disseminate lies. Thus, the ultimate goal of disinformation can be stated as the negation of individual or community rights to self-determination.

Of course, international law generally prohibits such acts on the principles of noninterference in the internal affairs of sovereign states, the maintenance of peaceful coexistence among states, and the right of self-determination of peoples, communities and individuals.⁶⁸ Properly understood, the right of self-determination comprehends all of the above rights. Noninterference⁶⁹ in the affairs of a community has no nobler objective than that of ensuring that the community can control its destiny. Peace cannot be maintained when a community is robbed of its right to manage its affairs, especially when domination and manipulation regularly replace dialogic and interactive communicative action.

Unfortunately, to proclaim the illegality of something in current international social existence, as seems to be the case with disinformation, is not to have achieved much. The lack of a central enforcement mechanism marks the difference between a nod of agreement and a nod of sarcastic commentary. Governments continue to condemn the disinformation activities of others while they engage in those very acts—and conveniently deny them when accused. How to control such activity seems, therefore, to be the crucial question.

Of course, self-help is one option. States can jam radio broadcasts and stop further publication of what they suspect to be fabricated information. However, self-help is neither effective nor desirable insofar as the developing countries are concerned.⁷⁰ It is ineffective because these countries do not have the technological and financial capacities to effectively monitor such information. It is undesirable because it is likely to lead to a tighter control by the state of the communication process. The political

68. See Falk, *CIA Covert Operations and International Law*, in *THE CIA FILE*, *supra* note 56, at 142-58.

69. Noninterference usually refers to interference that rises to such a level that it can be termed "dictatorial interference": action whose objective is to dominate and prescribe the actions of others. The process of domination may be direct and explicit or it may be less direct and implicit. See generally Fatouros, *Remarks on Covert Intervention and International Law*, 1975 AM. SOC'Y INT'L L. PROC. 192.

70. See *infra* Part VI, at 520.

cost of such tight control would be too high and of doubtful value in its capability to control disinformation.

Does this mean that we are doomed to the world of the disinformers? The answer is clearly no. We can and must develop a way of combating the circulation of intentionally false information. But that will require the cooperation and commitment of all members of the international community. The important point is that we go beyond the pious affirmation of the illegality and unethical nature of disinformation as a method of conducting foreign policy and provide institutional arrangements through which disseminators of such information are discouraged from engaging in such activities. The political cost of implanting false information must become prohibitive.

The somewhat disconcerting tendency in international legal discourse now is to readily grant the status of respectability to a particular act once that act has been repeatedly performed by the leading players on the stage of international relations. The logical terminus of such a perception is that disinformation might become an acceptable process, for the identifying feature of the above tendency is to continually fuse law with behavior.⁷¹ Consequently, "norms lose their critical capacity" and powerful dissenters seem "able to rewrite the norm."⁷² This is an obvious reaction to the extreme positivism that has ruled legal theory both on the national and international level and which sees legality as radically separate from behavior, thus making it irrelevant. The two extremes—positivism and cynical realism—should not, however, exhaust our knowledge or the possibilities of legality. The point is that, to be of any value, legality must play a dual role: it must reflect our social behavior while retaining the capacity to critically appraise that behavior.

Thus considered, legality will avoid either being a mere semblance of social life or a set of formal rules oblivious and insensitive to our concerns and daily lives. To say that legality must play a dual role is to maintain that, insofar as legality is to be of any value to us, it must embody the two dimensions of our inquiry: an accurate and comprehensive description of our present social life (reality), and an account of the alternative life (the possible). Neglecting one aspect of legality will make the notion of law a means of post hoc justification for the status quo.

If the first dimension is emphasized over the second, then one creates a

71. See Reisman, *Law from the Policy Perspective* in *INTERNATIONAL LAW ESSAYS* 3 (1981) ("The point is not who should be making these decisions according to certain text, but who is actually making them.").

72. Kennedy, Book Review, 21 *HARV. INT'L L. J.* 301, 302 (1980) (reviewing L. HENKIN, *HOW NATIONS BEHAVE* (2d ed. 1979)).

process through which the current distribution and appropriation of power is taken to be reality and then given legitimacy. This is precisely what international realism continually does; it takes the actors' appropriation of power not only as its point of departure, but as exhaustive of its inquiry. It uses the notion of legality merely to perform the bureaucratic baptism of legitimacy on those acts. If, on the other hand, the second dimension is emphasized, the status quo is simply justified in a different way. The real function of formal rules in relation to our daily lives is not inquired into; the formal existence of laws is understood as a sign of their effectiveness. Thus, the declaration of formal equality among states while there is no provision for, and a total absence of, substantive equality in all areas of international life is actually a cruel joke rather than an important regulatory scheme. Under this formalistic approach, the status quo is legitimized through a cognitive dissolution of the gap between "real life" and the function of formal rules.

This brief excursion into legal theory is included to put up a preliminary resistance against international realism, a theory that has been gaining some currency and which holds the view that once the relevant actors continually undermine a norm, that norm becomes legally "dead." It is also meant to suggest that international legal positivism, which clings to a set of rules whose connection to the social world is dubious, is not helpful insofar as social behavior makes those rules irrelevant, if not tragically comic.

B. *Structural Propaganda*

Traditional analyses of legal regulation of propaganda have focused on the intentionally false and on that which is explicitly intended to undermine the legitimacy and functional capacities of communal institutions and agencies. This section will explore an area of information previously ignored under the conventional analysis of propaganda: structural propaganda, or the act of disseminating information which is so selective and distorted that it can result in the structural negation of self-determination of some communities. Unlike intentional propaganda, which is mainly performed by states or their agencies, structural propaganda is carried out by the international (mainly private) media. The dissemination of such propaganda traditionally has been viewed as normal information flow consistent with article 19 of the Universal Declaration of Human Rights. Thus, it has not attracted the critical scrutiny of those interested in propaganda.

Structural propaganda involves communicative action which, while technically accurate, is so selective, unbalanced, and one-sided that it produces a wholly inaccurate and incomplete understanding of the com-

munities and situations at issue. Although such information may not be maliciously intended, it nevertheless has pernicious results. And in many ways it is the most effective type of propaganda, because it relies on framing⁷³ rather than falsehood, thereby creating the appearance of objectivity.

The selecting criterion for this information is a stereotypical and even prejudiced view of the subjects of discourse. Thus, Western media tends to cover developing countries from a point of view which sees the latter as culturally primitive, administratively chaotic, inefficient, and seriously backward.⁷⁴ From such stereotypes flows a selection of information tending to reinforce those views. A developing country becomes of interest to the international media mainly when it offers personalities like Amin or Bokassa,⁷⁵ or events like a national disaster or a coup. A recent study that examined how eight prestigious American newspapers covered the three worlds (the First World, the Second World, and the Third World) tersely concluded that "Third World coverage is skewed to the sensational."⁷⁶

73. "Framing" includes selection, packaging, tone of presentation, and labelling. See M. PARENTI, *INVENTING REALITY: THE POLITICS OF THE MASS MEDIA* 220 (1986).

74. A 1976 speech by the director of the Voice of America, Kenneth Giddens, is representative. Giddens observed:

[T]here is a feeling among many of us involved in this enterprise that we are engaged in helping to lift the veil of ignorance from the brows of masses of men and women in almost every corner of the earth. If this sounds pretentious, even boastful, I am sorry but I know that it is true.

Giddens, *Censorship and Man's Right to Know: Implications of the Transistor Age*, 93 VITAL SPEECHES 280, 282 (1977). Whether or not intended, media prejudice often surfaces. On November 29, 1984, for example, Tom Brokaw, the anchorperson of the NBC Nightly News, posed a particularly revealing question to a correspondent who had just finished reporting from London on the civil strife and famine then afflicting the Ethiopian province of Tigre: "You're back in London now which is one of the most civilized and sophisticated cities in the world. Do you still have some kind of culture shock after having just come out of that part of Africa?" *NBC Nightly News* (Nov. 29, 1984) (video tape copy available at Vanderbilt University Television News Archive, Heard Central Library, Vanderbilt University).

75. Idi Amin was the notorious dictator who ruled Uganda from 1971 until 1979. Jean-Bedel Bokassa crowned himself emperor of the Central African Republic and ruled that nation from 1965 until 1979. Both were simultaneously cruel and an embarrassment to their people. The Western press was obsessed with these leaders, especially Amin, not so much because of their cruelty, but because it found these leaders amusing and their stories salable to its audience. The actions of these leaders reinforced the prejudices that Western reporters have about that part of the world.

76. Potter, *News from Three Worlds in Prestige U.S. Newspapers*, 64 JOURNALISM Q. 73, 78 (1987). "News coverage about the Third World . . . is much more likely to be sensational in nature, while the coverage of Western events is more likely to display a

In sum, structural propaganda may occur on two levels: first, in terms of what the media chooses to communicate, which correlatively informs what is excluded from the process of communication; and second, in terms of how the media communicates what it has chosen to communicate, that is, how underlying cultural and political assumptions give an incident its intelligibility and coherence.

The first level of structural propaganda results from a deliberate selection process. For example, the international media's virtually obsessive preoccupation with the Amin's of Africa means that the Nyereres⁷⁷ of Africa seldom enter the picture. Consequently, Africa enters the Western consciousness as a continent capable of producing only the likes of Amin, rather than one with successes as well as failures. It is not so much what is included that makes the above act of communication propagandistic, but rather what is left out—especially considering the lack of context within which what is chosen is communicated. As previously stated, most of what the international media disseminates about the developing world revolves around disasters, coups, unusual leaders, or conference resolutions critical of the West. These societies are thereby presented at best as places in which unusual and incomprehensible events take place, and at worst as political and cultural opposites of the West.

The international media responds to such criticism with the argument that it is in the nature of journalism that exceptional or unusual events are selected. The media argues that its concentration on the Amin's rather than on the Nyereres, or on coups rather than on peaceful transfers of power, has nothing to do with the Western press' conception of developing countries. This "journalism of exception" is seen as a defining characteristic of mass communication rather than an attitude toward a culture or a group. In a sense there is some truth to this argument, for journalism of exception permeates mass communication.

However, even apart from the issue of the desirability of journalism of exception as a mode of communication, invoking it to defend the activities of the international media in relation to the developing world is unpersuasive. First, the international media reports proportionately more negative exceptional events about the developing world than about the developed world. Second, even if it were true that journalism of exception is equally applied to the two groups, it still has much graver conse-

balance between government stories and sensational stories." *Id.* at 276.

77. Julius Nyerere was the President of Tanzania from 1963 to 1985. He is a highly respected, independent, and innovative (though not always successful) leader who embodies the best hope of the African Continent. But the Western media never found Nyerere or his policies and endeavors newsworthy.

quences for the developing world than for the developed world. Consider, for example, the reporting of a calamitous event. If the event occurs in France (a developed nation), the receiving audience possesses a reservoir of knowledge within which the event can be understood—and it will be understood as an exceptional event. On the other hand, if the event takes place in a developing nation, the event itself introduces the receiving audience to that nation. Thus, for example, Uganda entered the American consciousness through the exceptional events surrounding Idi Amin. And, for most Americans, those events became the only available means through which they could define Uganda's identity. Journalism of exception, therefore, has produced structural propaganda by selectively reinforcing the prejudices of people in the developed world about developing countries.

The second level of structural propaganda takes place at the level of interpretation. Here the issue is how the cultural and political assumptions of the Western media about these societies—that they are backward (politically as well as culturally) and chaotic—give an incident its intelligibility; that is, how the event is transformed into a story congruent with these assumptions. Thus, an American reporter who goes to the Middle East with the assumption that Islam represents a resurgent atavism “which suggests not only the threat of a return to the Middle Ages but the destruction of what is regularly referred to as the democratic order in the western world,”⁷⁸ readily interprets the anti-American sentiment in Iran as another example of Islam's attempt to negate modernism and modern (read Western) culture. Without these pre-existing assumptions, the Iranian situation could be explained alternatively as a continued manifestation of the Iranians' resentment of how America put the former Shah into power and how it enabled him to maintain power for so long, despite popular dissatisfaction with his regime and policies.

At both levels of structural propaganda, what is at work is neither a conspiracy nor a willful attempt to disseminate unbalanced information, but rather cultural and political assumptions and prejudices that provide the invisible frame within which events are selected, and through which they are made intelligible to the audience.

Structural propaganda negates the right of self-determination of developing countries in two ways. First, developed nations often make major decisions about developing nations on the basis of stereotypical and incomplete information,⁷⁹ and this may seriously affect the political and

78. E. SAID, *COVERING ISLAM* 51 (1981).

79. At the very least, such information orients the populace so that it can pressure its leadership to adopt a particular policy toward the developing world.

social life of developing societies. Second, because most of the information disseminated in developing countries is information largely selected by the major Western news agencies, those communities are to some extent denied an accurate and balanced picture of themselves. Thus, there are two ways in which these communities' self-determination can be undermined: Their interactive process and general relationship with other communities are distorted, with negative social and political consequences; and their perception of their existing conditions becomes inaccurate and distorted. Both of these conditions and their consequences are structural rather than intentional. However, their effect is, in significant ways, very similar to intentional propaganda: they deny communities substantively accurate information, the minimum condition for self-determination.

VI. STATE RESPONSES TO PROPAGANDA

The potential responses to the forms of propaganda outlined above vary according to the nature of the propaganda and the manner and means of its dissemination. But generally, they fall into two groups: those which can be taken unilaterally by the state, and those adopted according to internationally agreed upon and coordinated procedures through which the propagandistic message may be stopped or rectified. This section will analyze the two major areas of state action, jamming and ordinary censorship.

A. *Jamming*

Jamming is one of the most common ways in which states respond to unwanted incoming information—including propaganda—if the means of communication is radio.⁸⁰ Jamming involves the transmission of radio signals on the same frequency as that of the contested broadcast so as to make the broadcasting signals unintelligible. Two types of jamming exist: skywave and groundwave jamming. Where skywave jamming is utilized, the jamming party uses powerful transmitters stationed equidistant from the targeted audience and the broadcaster. The jammer then radiates jamming signals into the ionosphere, which reflects the signals across the path of the offending broadcast.⁸¹ This can be very effective in

80. There are other less common methods states use to exclude or interfere with foreign broadcasts. See Savage & Zacher, *Free Flow Versus Prior Consent: The Jurisdictional Battle Over International Telecommunication*, 42 INT'L J. 342 (1987).

81. See Price, *Jamming and the Law of International Communications*, 1984 MICH. Y.B. INT'L LEGAL STUD. 391, 399 n.1.

shielding large areas from broadcast signals. Its effectiveness will obviously be limited when there are changes in the ionosphere; for example, when the sun has set in the areas to which the signals are going, but is still shining in the region where the broadcast originates. This is sometimes referred to as "twilight immunity." Groundwave jamming, on the other hand, utilizes less powerful transmitters located near the intended audience and radiates the jamming signal directly at the audience. This is mainly used to block signals to large urban areas⁸² since the signal can effectively blanket a twenty mile area.⁸³ The jamming signal may simply be irritating "noise," a distorted voice or music transmitted at the same frequency.

Jamming of radio broadcasts began in the 1930s. During that decade many European countries employed jamming as a method of response to unwanted information.⁸⁴ Jamming was also used by both sides during World War II. Since 1948, however, jamming has become substantially an East-West⁸⁵ phenomenon. When tension between the East and the West increases, the former usually employs jamming to control what it considers hostile propaganda emanating from the latter.⁸⁶

82. See D. ABSHIRE, *INTERNATIONAL BROADCASTING: A NEW DIMENSION OF WESTERN DIPLOMACY* 48-49 (1976).

83. D. SHANOR, *BEHIND THE LINES* 145 (1985).

84. Borra, *The Problem of Jamming in International Broadcasting*, 11 *J. BROADCASTING* 355, 357 (1967).

85. For purposes of this discussion, the terms "East" and "West" refer to the Warsaw Pact and NATO countries respectively.

86. The Soviet Union started jamming Voice of America (VOA) in 1948 when cold war tension rose over the West Berlin issue. The ascension of Khrushchev and the de-Stalinization campaign brought temporary relaxation of both tension and jamming of radio broadcasts from the West, although the CIA-financed Radio Liberty and Radio Free Europe were still jammed. The Suez and Hungarian crises of 1956 led to renewed jamming. There was some relaxation in 1963 following the entry into force of the Test Ban Treaty. Following the Soviet Union's invasion of Czechoslovakia in 1968, however, jamming was resumed. On the eve of the Helsinki Conference on Security and Cooperation in Europe, the Soviet Union stopped jamming, but that was only short-lived as the Polish crisis and the 1979 Afghanistan invasion brought in a renewed jamming process. Since that time Soviet jamming of Western radio broadcasts has occurred intermittently. See D. SHANOR, *supra* note 83, at 144-47.

Recently, the Soviet Union reportedly stopped jamming broadcasts of the BBC and VOA. See *Years of Jamming Voice of America Halted by Soviet*, *N.Y. Times*, May 26, 1987, at A1, col. 4; *Moscow Stops Jamming Voice of America*, *L.A. Times*, May 26, 1987, at 6, col. 6. This is a sign that two things may be happening: (1) Gorbachev's policy of *glasnost* (openness) is bearing fruit; and/or (2) the relationship between the East and West is perceived to be relatively normal. A *New York Times* editorial, while expressing satisfaction with the cessation of jamming against the BBC and VOA, chal-

The legality of jamming is presently an unsettled issue. The strongest legal argument against jamming is stated in the International Telecommunication Convention (ITC).⁸⁷ Article 35 of the ITC prohibits emissions intended to jam, or in any way unlawfully interfere with, authorized frequency which has met and continues to meet the ITC's technical standards.⁸⁸ Major jamming powers like the Soviet Union are parties to

lenged Moscow to stop "all the illegal jamming [so that] the possibilities for cultural exchange would enlarge, and the world would listen more closely to professions of *glasnost*." *Message To, and From, Moscow*, N.Y. Times, May 28, 1987 (editorial), at 22, col. 1.

Some of the Soviet Union's Warsaw Pact allies also engage in jamming. See VOICE OF AMERICA, JAMMING 2-3 (1980); Price, *Jamming and the Law of International Communications*, 1984 MICH. Y.B. INT'L L. 391; Note, *Radio Propaganda in the Contexts of International Regulation and the Free Flow of Information as a Human Right*, 5 BROOKLYN J. INT'L L. 154, 173 (1979) [hereinafter Note, *Radio Propaganda*]. The Soviet Union is said to spend approximately \$900 million per year jamming radio broadcasts from the West. See Jones, *In a Crisis, Whom to Tune in? In the Soviet Bloc, Probably Western Radio*, N.Y. Times, May 5, 1986, at 4; see also D. ABSHIRE, *supra* note 82, at 49; Bethel, *Propaganda Warts*, HARPER'S, May 1982, at 19-20.

Cuba has apparently utilized jamming to negate the allegedly hostile and subversive broadcasts of Radio Marti. See *supra* note 18 and accompanying text. Cuba's fears and complaints are reinforced by observations of various people who oppose the Castro regime. According to the Executive Director of the Cuban-American National Foundation, "[T]hese radio broadcasts would be a part of a policy of containment of Castro, of protecting U.S. policy in the Caribbean." Cuban-American Nat'l Found., U.S. RADIO BROADCASTING TO CUBA 22 (1982), *quoted in* Feltman, *supra* note 18, at 83. Representative Toby Roth from Wisconsin put it a bit more bluntly: "Let's throw Castro out of Cuba and give Cuba back to the Cubans." Mr. Roth perceived Radio Marti to be contributing to that goal. *Id.*

87. International Telecommunications Convention, Oct. 25, 1973, 28 U.S.T. 2510, T.I.A.S. No. 8572 *reprinted in* INTERNATIONAL LAW GOVERNING COMMUNICATIONS AND INFORMATION: A COLLECTION OF BASIC DOCUMENTS 232-42 (E. Ploman ed. 1982) [hereinafter BASIC DOCUMENTS].

88. Article 35 states in part:

1. All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members or of recognized private operating agencies, or of other duly authorized operating agencies which carry on radio service, and which operate in accordance with the provisions of the Radio Regulations. . . .

3. Further, the Members recognize the desirability of taking all practicable steps to prevent the operation of electrical apparatus and installations of all kinds from causing harmful interference to the radio services or communications mentioned in [this article].

Id. art. 35, paras. 1, 3, *reprinted in* BASIC DOCUMENTS, *supra* note 87, at 240. The newest unpublished version of the Convention, adopted in Nairobi, Kenya on November 6, 1982 and entered into force for the United States on January 10, 1984, did not alter any of the above provisions.

the Convention, and hence theoretically bound by it. However, the administering United Nations agency, the International Frequency Registration Board (IFRB) of the International Telecommunications Union (ITU),⁸⁹ has only a mediating and conciliating role and must in fact be invited by the disputants to assume that role. Moreover, because the IFRB's recommendation can be rejected by either of the parties to the dispute without those parties incurring any sanctions, the ITC's provision is not particularly strong in terms of discouraging intentional interference with signals.⁹⁰

The 1979 ITU Radio Regulations⁹¹ provide similar proscriptions. Article 16(2), for example, forbids all stations from engaging in "unnecessary transmissions," "the transmission of superfluous signals and correspondence," "the transmission of false or misleading signals," and "the transmission of signals without identification. . . ."⁹² It can be argued that jamming signals are "unnecessary" from the technical standpoint of transmitting signals; that the sounds they emit are misleading; and that they certainly are not identified or identifiable. Furthermore, article 16(3) instructs all stations to "radiate only as much power as is necessary to ensure a satisfactory service."⁹³ However, like the ITC provisions, the Radio Regulations provide no credible means of sanctioning offending parties; article 20(1) simply urges member states to exercise "the utmost good will and mutual assistance in the application of the provisions of Article 35 of the Convention and of this Article to the settlement of problems of harmful interference."⁹⁴ Notwithstanding existing procedures through which unauthorized and persistent interferences are reported to centralized bodies and ultimately to the IFRB, there is no mechanism for sanctioning a persistent offender.

Jamming as a response to unwelcome information emanating from external sources has been the subject of various other normative international statements. In 1950, for example, the General Assembly adopted a

89. The IFRB, which was established in 1947, is designed to ensure orderly utilization of the radio frequency spectrum. It is responsible for the implementation of the Radio Regulations and the maintenance of "a Master Register for all frequency assignments made by the national authorities." BASIC DOCUMENTS, *supra* note 87, at 227.

90. See Note, *Radio Propaganda*, *supra* note 86, at 163; see also D. LEIVE, INTERNATIONAL TELECOMMUNICATIONS AND INTERNATIONAL LAW: THE REGULATION OF THE RADIO SPECTRUM 184-85 (1970).

91. *The Radio Regulations*, Final Acts of the World Administrative Radio Conference (1979), reprinted in BASIC DOCUMENTS, *supra* note 87, at 245-56.

92. *Id.* art. 16, § 2, reprinted in BASIC DOCUMENTS, *supra* note 87, at 254.

93. *Id.* art. 16, § 3, reprinted in BASIC DOCUMENTS, *supra* note 87, at 254.

94. *Id.* art. 20 § 1, reprinted in BASIC DOCUMENTS, *supra* note 87, at 255.

series of resolutions condemning the practice as inconsistent with the right of all people to be informed.⁹⁵ The United Nations Economic and Social Council issued its own condemnation soon thereafter.⁹⁶ However, one General Assembly resolution indicates the ambiguous legal status of jamming, at least in relation to propaganda. Following a general condemnation of jamming, Resolution 424 "Invites all governments to refrain from radio broadcasts that would mean unfair attacks or slanders against other peoples anywhere and in so doing to conform strictly to an ethical conduct in the interest of world peace by reporting facts truly and objectively[.]"⁹⁷ This resolution raises a serious question: What happens if a station (whether private or public) persists in disseminating any of the above types of information? Is jamming permitted as a legitimate response to such actions? In his widely cited treatise on international law, Oppenheim advances the view that the exclusion of unwanted information is part of the sovereign's claim to full control over its territory.⁹⁸ The moral supplement to this doctrinal exposition is the feeling that jamming offers the only practical method of excluding any form of propaganda that will undermine the self-determining capacity of communities and nations. It is seen as the functional equivalent of stopping the printed message at the borders.

Another view exists which, while condemning the practice of jamming in general, will allow it as a form of self-defense in specific cases.

95. *Report of the Economic and Social Council*, 5(5) U.N. GAOR Supp. (No. 3), at 62-63, U.N. Doc. A/1345 (1950); G.A. Res. 424, 5 U.N. GAOR Supp. (No. 20) at 44, U.N. Doc. A/1775 (1950). The phrase "the right of all people" refers to article 19 of the Universal Declaration of Human Rights, which declares that all people have a right "to seek, receive and impart information and ideas through any media without regard to frontiers." Universal Declaration of Human Rights, *supra* note 36, art. 19.

96. 11 U.N. ESCOR Supp. (No. 5A) at 2 (1950). As adopted by the General Assembly, the Economic and Social Council Resolution reads:

Considering that the duly authorized radio operating agencies in some countries are deliberately interfering with the reception by the people of those countries of certain radio signals originating beyond their territories. . . [and that] this type of interference constitutes a violation of the accepted principles of freedom of information, . . . [the Assembly] condemns measures of this nature as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers

Id. G.A. Res. 424, 5 U.N. GAOR Supp. (No. 20) at 44, U.N. Doc. A/1775 (1950).

97. *Id.*

98. "The principle of exclusive sovereignty in the air space for the subjacent State, which has received general approval . . . enables that State to prohibit the disturbance of the air space over its territory by means of Herzian waves caused for the purpose of wireless communication and emanating from a foreign source." 1 L. OPPENHEIM, *INTERNATIONAL LAW* § 197f, at 529 (H. Lauterpacht 8th ed. 1955).

Bowett, for example, argues that,

[w]here the delict involves the broadcasting of propaganda the state may have recourse to 'jamming', which may be illegal *prima facie* but justifiable as self-defence. Thus the decision of the British government to 'jam' the broadcasts from Athens Radio in January, 1956, was justifiable as a measure of self-defence against delictual conduct by Greece. . . .⁹⁹

The self defense argument is closely related to the sovereignty argument in that the concept of self defense assumes the existence of a self: a community with its own identity and capacity to run its affairs. An external and coercive interference with this community can be legitimately resisted and repulsed. The two positions differ only in the type of information excluded. Under the self defense argument, the range of excludable information is much narrower. It must threaten and seriously impinge upon the community's capacity to run its affairs. Thus, the self defense argument will allow a great deal of the propaganda discussed above, for the impact of that information on the complainant community is not always obvious or immediate.

International law arguably allows jamming in relation to certain kinds of propaganda. Disinformation, hostile propaganda, and advocacy of national, social or religious hatred that constitutes incitement to discrimination, hostility or violence cannot be considered protected by the right to have "freedom to seek, receive and impart information."¹⁰⁰ These forms of propaganda negate rather than enhance a community's capacity for self-development and self-determination. Disinformation denies people the right to accurate information upon which they determine their relation with their social as well as physical environment. Hostile propaganda denies people the capacity for a balanced and reasoned interactive process. The advocacy of hatred and discrimination negates people's

99. D. BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* 54 (1958) (footnote omitted). See also Glahn, *The Case for Legal Control of "Liberation" Propaganda*, 31 *LAW & CONTEMP. PROBS.* 553, 582 (1966) ("[A]ny target state for subversive propaganda possesses a perfect legal right to adopt jamming procedures against foreign subversive transmissions. . . .").

Andrei Vishinsky, the Soviet delegate to the United Nations, presented a different rationale for jamming when he admitted for the first time that the Soviet Union jams Western radio broadcasts. Speaking before the United Nations General Assembly in November 1949, Vishinsky defended jamming of BBC broadcasts, arguing that the Soviet Government feared the Russian people would react violently to the untruths. Such an outcry, he asserted, would endanger peaceful cooperation between the Soviet Union and Great Britain. Borra, *supra* note 84, at 358.

100. G.A. Res. 424, 5 U.N. GOAR Supp. (No. 20) at 44, U.N. Doc. A/1775 (1950) (quoting Universal Declaration of Human Rights, *supra* note 36).

right to self-determination on two counts: It seeks to prevent those about or against whom the discriminatory propaganda is aimed from being treated with respect. Moreover, such advocacy tends to deprive those people a legitimate role in the power process,¹⁰¹ because people frequently are excluded from effective participation in various sections of social and political life on the basis of such information. In addition, such propaganda totally denies the target audience access to accurate information on which to base its relationship with the victim of the propaganda. Hence, discriminatory propaganda provides the clearest example of the anti-dialogic and manipulative interactive process that negates rather than enhances a people's capacity for self-determination.

Notwithstanding the argument that jamming can be employed legally to exclude certain types of propaganda emanating from external sources, it is neither effective nor desirable from the developing countries' points of view. Jamming is ineffective for four reasons. First, for most developing nations it is not a readily available means of control. These nations have neither the financial nor the technological capacity to jam offending broadcasts emanating from the powerful transmitters used by such stations as the Voice of America (VOA) and Radio Moscow. Indeed, most developing countries cannot even reach one-third of their citizens, much less jam powerful transmitters from radio stations in developed countries. Second, the emergence of DBS as a means of international communication ensures that developing countries' capacity to control what they consider to be undesirable information will be further limited. In fact, given the huge areas of DBS service and the prohibitive cost of the necessary technology, jamming is unlikely to be even remotely possible.¹⁰² Third,

101. Discriminatory propaganda is explicitly and generally prohibited under international law. Articles 1(3) and 13(1)(b) of the U.N. Charter generally prohibit discrimination which is based on "race, sex, language, or religion." U.N. CHARTER, art. 1, para. 3, art. 13, para. 1(b).

In addition, article 20(2) of the International Covenant on Civil and Political Rights provides that "any advocacy of . . . racial . . . hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." International Covenant on Civil and Political Rights, *supra* note 37, art. 20, para. 2. The International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, art. 4, 660 U.N.T.S. 195, 220, also prohibits racial propaganda and calls on member states to prohibit such dissemination. Another United Nations convention urges state parties to, *inter alia*, "adopt any legislative measures necessary to suppress as well as to prevent any encouragement of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime." The International Convention on the Suppression and Punishment of the Crime of Apartheid, art. 4, G.A. Res. 3068, 28 U.N. GAOR Supp. (No. 30) at 166, U.N. Doc. A/9233/Add. 1 (1973).

102. Of course, the government could cut off "reception at the community receiver,"

even if jamming were technologically and economically feasible, one might argue that it could not legally be employed to exclude structural propaganda, a major concern for developing countries. Because of its less obvious and less immediate—though by no means less significant—impact, the international statements reviewed above might be viewed as not authorizing such measures against structural propaganda. Finally, most of the structural propaganda that concerns developing countries is outgoing rather than incoming. It concerns the story told about them in the developed world rather than the story that is told to them. Jamming by its very nature is of no use against outgoing propaganda.

In addition to being ineffective, jamming is also undesirable. Such measures would undoubtedly breed a chaotic international broadcasting process in which every nation would simply act on its suspicions by jamming any station it considered unfriendly. This would clearly undermine international exchange and dialogue. Furthermore, jamming appears to be a reactive and negative act. It lacks the capacity both to deal with the structural issues that give rise to the undesirable interactive system and to rectify the situation once undesirable propaganda has been disseminated.

B. *Ordinary Censorship*

Ordinary censorship provides another means by which states may exclude incoming written propaganda. Both article 29 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights can be relied upon as the legal justification for accomplishing this. Article 29 provides that a state can restrict freedom of information for “the purpose of securing due recognition and respect for the right and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”¹⁰³ Article 19(3) of the Covenant also provides that the right of freedom of information can be restricted “[f]or the protection of national security or of public order (*ordre public*), or of public health

and “forbid all home reception by banning the manufacture or importation of home reception antennas or adaptors.” Note, *Approaches To Controlling Propaganda and Spillover from Direct Broadcast Satellites*, 5 STAN. J. INT’L STUD. 167, 185 (1970). However, these procedures are costly, especially for developing countries, and, as noted elsewhere in this Article, such procedures deny freedom of information by this total restriction. Moreover, they retard the technological development by restricting (or even eliminating) its use.

103. Universal Declaration of Human Rights, *supra* note 36, at 77.

and morals."¹⁰⁴ Many countries engage in such censorship to exclude both incoming and internally-generated information seen as propagandistic.

Even the United States, a nation that usually assumes the posture of a defender of the free flow of information, engages in such "stop at the border" censorship. The McCarran-Walter Act,¹⁰⁵ for example, has been used to deny visas to foreigners whose views the United States Government does not particularly appreciate. Section 212(a)(28) of the McCarran-Walter Act denies visas to foreigners who believe in or write about communism or anarchism, or who belong to organizations that promote those doctrines.¹⁰⁶ Under section 212(a)(27), the United States Attorney General or a consular officer can deny visas to people who wish to enter the United States "solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States."¹⁰⁷ Many international figures have been denied entry into the United States under the authority of these provisions. The list includes the Nobel Prize laureate Gabriel Garcia Marquez of Colombia; the widow of the late Chilean President Salvador Allende; Nino Pasti, a former four-star general in the Italian Air Force and an expert on nuclear weapons; Dario Fo, a popular Italian playwright with a leftist tendency; and the renowned Belgian economist Ernest Mandel.¹⁰⁸

Successive governments of both parties have invoked the McCarran-Walter Act to exclude people for ideological reasons, usually on the ground that foreign applicants hold views that challenge the premise of a particular foreign policy being pursued. In a nation that defines itself as one committed "to the principle that debate on public issues should be uninhibited, robust, and wide-open,"¹⁰⁹ the McCarran-Walter Act—and

104. International Covenant on Civil and Political Rights, *supra* note 37.

105. Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (1952) (current version at 8 U.S.C. §§ 1101-525 (1982 & Supp. IV 1986)) [hereinafter McCarran-Walter Act]. In December 1987, Congress suspended the ideological exclusion provision of the Act; however, the amendment will remain in effect only through February 1989. Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, 101 Stat. 1399-400 (1987) (codified as note to 8 U.S.C. § 1182 (1982)). Congress has yet to repeal the Act. *Id.* 101 Stat. at 1400. See Greenhouse, *U.S. Ends Bid to Expel Mexican Leftist Writer*, N.Y. Times, Feb. 5, 1988, at 14, col. 1.

106. McCarran-Walter Act, *supra* note 105, 8 U.S.C. § 1182(a)(28) (1982).

107. *Id.*, 8 U.S.C. § 1182(a)(27) (1982).

108. Shapiro, *Ideological Exclusions: Closing the Border to Political Dissidents*, 100 HARV. L. REV. 930, 930 (1987).

109. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). See also Shapiro, *supra* note 108, at 933.

the manner in which it has been invoked and applied—appears to be a “constitutional anomaly.”¹¹⁰ Although Congress appears to be increasingly uneasy about the Act, anti-communist sentiment remains sufficiently acute in this country, such that members are not “anxious to cast a vote that might be portrayed as soft on communism by political opponents.”¹¹¹

The Foreign Agents Registration Act¹¹² provides another, less explicit, procedure through which the United States Government attempts to censor incoming information at the border. The Registration Act requires an “agent of a foreign principal”¹¹³ to file all “political propaganda”¹¹⁴

110. Shapiro, *supra* note 108, at 933.

111. *Id.* at 939. Shapiro further notes: “[T]he legislative status quo continues, less as a product of affirmative choice than as an expression of the collective desire to avoid any choice.” *Id.*

112. 22 U.S.C. §§ 611-21 (1982 & Supp. 1988).

113. “Agent of a foreign principal” is defined as:

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

Id. § 611(c).

114. “Political propaganda” is defined in part as:

any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political and public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence. . . . [D]isseminating’

with the Attorney General within forty-eight hours of its transmission. The notice must include "full information as to the places, times, and extent of such transmittal,"¹¹⁵ as well as "the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda. . . ."¹¹⁶ In addition, the Registration Act gives the Attorney General power to prescribe additional regulation or restriction to ensure the protection of "national security and the public interest."¹¹⁷

Even though the Registration Act does not specifically prohibit access to these materials, the pre-transmission procedures it prescribes—plus the ignominious label "political propaganda"—are meant to discourage their transmission and to minimize their impact once transmitted. The pejorative connotations of the words "foreign agent" and "political propaganda" provide a sufficient deterrent to potential sponsors and distributors in the United States. They also tend to minimize the credibility of the message among the audience to whom it is communicated.¹¹⁸ In other words, such labels are intended to place a whole category of information beyond the pale of legitimate discourse.¹¹⁹

This brief excursion into the methods and procedures through which the United States Government excludes information from foreign sources

includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United State mails[.]

Id. § 611(j).

115. *Id.* § 614(a).

116. *Id.* § 614(b).

117. *Id.*

118. *Canadian Films and the Foreign Agents Registration Act: Oversight Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 98th Cong., 1st Sess. 55 (1983) (statement of Susan W. Shaffer, Staff Counsel, American Civil Liberties Union) ("[P]eople in sophisticated towns like Washington, D.C., have seen these movies. Upstate New Yorkers, however, may well be chilled by looking at films that they know their own Government has officially classified as foreign political propaganda."). Appearing before the same hearing, a Department of Justice representative admitted: "[I]t is fair to say that the original act reflected a perceived close connection between political propaganda and subversion. It is this original focus [on] . . . the pejorative connotations of the phrases 'foreign agents' and 'political propaganda' which has caused such misunderstanding over the years." *Id.* at 3 (testimony of D. Lowell Jensen, Assistant Attorney General, Criminal Division, Department of Justice).

119. Among the films found to contain objectionable "political propaganda" are three Canadian films that depict the dangers of nuclear war and acid rain: *If You Love This Planet*; *Acid Rain: Requiem or Recovery*; and *Acid from Heaven*. *Meese v. Keene*, 107 S. Ct. 1862, 1864 n.3 (1987). In *Keene*, the Supreme Court found the Act's provisions permissible under the first amendment. *Id.* at 1870-73.

is meant to highlight two points. First, even the United States, the harshest critic of the New World Information and Communication Order and the principle of regulation inherent in that order, does in fact employ methods of censorship at the border. The lofty principle of "free flow" with which the United States Government has been clubbing those developing countries who push for international regulatory schemes gives way to pragmatic political calculation when the stream changes course and flows in the opposite direction. Second, as is apparent from the application of the above two Acts and the resulting exclusion of people and information from the United States, a national attempt to regulate incoming information is likely to result in a wide and undesirable exclusion of information. Governments are likely to give national security a very expansive meaning, usually equating governmental security with the security of the nation or the polity. In other words, ordinary censorship is an undesirable response to propaganda. And for developing countries, ordinary censorship, like jamming, will not remedy their concern over the propaganda disseminated about them in the developed countries.

Thus, for developing nations, unilateral state action in whatever form—whether by jamming or by stopping information at the border—offers neither an effective response to propaganda, nor a desirable means of enhancing the free flow of interstate information.

VII. INTERNATIONAL RESPONSES TO PROPAGANDA

An internationally coordinated response to propaganda would provide an obvious alternative to the rather chaotic and arbitrary unilateral measures outlined in the preceding section. An international response could take various forms. An agreement regulating disinformation and hostile propaganda might simply require states to prohibit that form of dissemination from within their jurisdictions and to punish the disseminators. This course of action was initially urged upon the General Assembly in its second session, and was also provided for under article 1 of the 1936 Broadcasting Convention.¹²⁰ This approach seems to be an acceptable, or at least less controversial, means of controlling hostile propaganda and disinformation.

A. *Prior Consent*

Structural propaganda, at least in the area of broadcasting, could be approached from a different perspective: a prior consent principle. The concept of prior consent, which has become prominent in the context of

120. See *supra* note 24 and accompanying text.

developing a legal regime to regulate DBS, suggests that the communicator obtain the consent of the receiving state prior to transmitting information to any territory within that state. The General Assembly of the United Nations gave some legitimacy and programmatic content to the prior consent principle on December 10, 1982 when it adopted a resolution concerning DBS.¹²¹ Although the 1982 resolution departed from earlier drafts in that it does not specifically refer to "prior consent,"¹²² a reading of Principle 10, which deals with "Consultation and Agreements between States," clearly suggests that "good faith consultations are required during which a potentially receiving State would be able to use the objection of non-consent."¹²³ Thus, prior consent under Principle 10 envisions good faith negotiations between receiving and broadcasting communities to establish institutional arrangements such that broadcasting across international boundaries will occur only after these agreements have been reached. If prior consent is understood solely as giving the receiving state veto power over information entering its territory by simply refusing to agree to an institutional arrangement, then it cannot effectively reduce the structural propaganda that concerns developing countries. Indeed, it will have a negative and restrictive impact on people's right to communicate.

Prior consent will be ineffective because it will not prevent the dissemination of objectionable propagandistic material in the country where the broadcast originates or in other countries that do not object to the broadcast.¹²⁴ The victim state will still lack the means to counter the damage occasioned by dissemination in other countries, especially if it is a developing country without the resources at the disposal of the broadcasting state or entity.

121. Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, G.A. Res. 92, 37 U.N. GAOR Supp. (No. 51) at 98, U.N. Doc. A/37/646 (1982) reprinted in 22 I.L.M. 451 (1983). Although the resolution was adopted by an overwhelming margin (107 in favor, 13 against, and 13 abstentions), it failed to secure all but one of the principal space-resources states. *Id.*

122. The Soviet proposal, for example, sought to impose strict control over DBS broadcasts that had not secured the agreement of the receiving state. See Draft Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting, U.N. Doc. A/8771 (1972); *Report on the Working Group on Direct Broadcast Satellites of the Work of its Fourth Session*, 27 GAOR (2081 plen. mtg.) at 5, U.N. Doc. A/AC.105/117, Annex 3 (1973).

123. Christol, *Prospects for an International Legal Regime for Direct Television Broadcasting*, 34 INT'L & COMP. L.Q. 142, 149 (1985).

124. This is so even if there is an agreement by the broadcasting state or entity to refrain from broadcasting to the territory of the receiving state whenever the receiving state objects to such broadcasting.

In addition to this ineffectiveness, prior consent is also very restrictive. Conceptually, prior consent does not ensure participation in the communication process; it merely gives the receiving state the power of refusal. And history dictates that authoritarian regimes are likely to err on the side of refusing transmission, and to exercise that right more often than is really required.

What is needed is not an ineffective and restrictive institutional arrangement such as prior consent, but rather an arrangement that will strengthen and increase the participatory dimension in the domain of international communication—an arrangement that will give developing countries access to the international media. This would enable them to communicate their version of the events, to correct the error inherent in structural propaganda, and to supplement incomplete information.

B. *Right of Correction*

We must abandon the clichés of the noble orator and the brave printer if we are ever to understand our media as they actually operate within our society.¹²⁵

The right of reply and the right of correction offer alternative means of responding to international propaganda.¹²⁶ In fact, the two rights are utilized quite frequently in both domestic and regional settings.¹²⁷ At the

125. D. LE DUC, *BEYOND BROADCASTING* 188 (1987).

126. The right of correction and the right of reply are, in principle, two distinct types of responses. The right of reply generally covers those situations in which a person or institution feels wronged or offended by a specific publication and demands that a written reply appear in the same publication. The following conditions usually apply to a right of reply: (1) the reply must appear with a minimum loss of time; (2) it must appear in the same spot as the impugned text, without any omissions or interpretations; and (3) the text of the reply must be approximately identical in length to the offending text. The right of reply usually applies regardless of whether the offending publication is accurate or inaccurate. The right of correction differs from the right of reply in two respects: (1) the offending text must be alleged to be incorrect; and (2) the correction is usually composed by the party that allegedly erred.

This Article will treat the two rights as complementary and refer to them jointly as a right of correction. As argued above, however, international propaganda takes the form of both selective distortion and outright lies. Thus, any response to such dissemination must necessarily incorporate the traditional responses as defined by both the right of correction and the right of reply.

127. An example of a regional right of reply appears in the American Convention on Human Rights, which provides that:

Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such

international level, however, logistical problems have impeded such endeavors. Foreign individuals and communities simply do not have the same access to media institutions as nationals, and are thus unable to utilize this procedure meaningfully.

Nevertheless, the Convention on the International Right of Correction (Correction Convention)¹²⁸ attempts to institute this procedure on the international level. The Correction Convention provides a right of correction when a "news dispatch"¹²⁹ transmitted by correspondents or information agencies from one country is published and disseminated abroad and a contracting state contends that the report is false or distorted and "capable of injuring its relations with other States or its national prestige or dignity. . . ."¹³⁰ In such a case, the aggrieved state may issue a communiqué stating its version of the facts, without comment or expression of opinion, to the state within whose territory the dispatch is disseminated.¹³¹ The state receiving such a communiqué must release it

conditions as the law may establish.

American Convention on Human Rights, *supra* note 45, art. 14, reprinted in INTERNATIONAL HUMAN RIGHTS INSTRUMENTS at 190.6.

In 1974 the Committee of Ministers of the Council of Europe adopted a resolution recommending that member states provide for the right of reply "in the press and on radio and television and any other periodical media." Res. (74) 26, *On the Right of Reply—Position of the Individual in Relation to the Press* (1974), reprinted in 1974 EUR. Y.B. (Council of Eur.) 399, 403.

128. Convention on the International Right of Correction, Aug. 24, 1962, 435 U.N.T.S. 191 [hereinafter Correction Convention].

The first effort to create an international right of reply occurred in the 1920s. In 1929, for example, the International Juridical Congress on Radio sought to extend to radio the right of reply for the press which was then in use in many countries. In 1931, the International Federation of League of Nations Societies recommended that a right of reply be made available to any state that objects to a press or radio report that was either "inexact or calculated to disturb international relations." The International Federation of Journalists made similar observations at its meeting in Brussels in 1934. See Whitton, *supra* note 31, at 614.

129. "News dispatch" is defined in the Correction Convention to mean "news material transmitted in writing or by means of telecommunications, in the form customarily employed by information agencies in transmitting such news material, before publication, to newspapers, news periodicals and broadcasting organizations." Correction Convention, *supra* note 128, art. 1, para. 1. The concept of a right of correction is merely a transfer to the international level of an institution that has been part of the national law of many Western countries, and whose basic premise is embodied in the maxim *audiatur et altera pars* (the person referred to in a printed report should have the right to convey to the readers his side of the question).

130. *Id.* art. 2, para. 1.

131. *Id.* The "dispatch" need not be transmitted by a correspondent from the territory of the state that wishes to issue the communiqué. It may be dispatched from another

as soon as possible (and at least within five days from the date of receipt) to correspondents and information agencies operating in its territory and to the headquarters of the medium whose correspondent authored the dispatch in dispute, if the headquarters are located within the territory of the country.¹³² If the request is not acted upon within the prescribed time limit, the complainant state may ask the Secretary General of the United Nations to give appropriate publicity to the information contained in the communiqué through channels at his disposal.¹³³ Another option for a complainant state is to refer the case to the International Court of Justice (ICJ).¹³⁴

By and large, the Correction Convention has been ineffective for a number of reasons. First, only a few states have ratified it, and only one of these is a major power headquartering a dominant transnational agency and other transnational media institutions.¹³⁵ Because the international media is allegedly the source of most of the propaganda, and considering that most of the media is headquartered in the developed nations, an international right of correction without the participation of the major powers becomes totally ineffective. Second, even if a contracting party accepted the communiqué and passed it on to the concerned institution, there is no guarantee that the medium will publish or broadcast it. Furthermore, in some countries the media might successfully claim constitutional protection from carrying out such activities. This would likely be the case in the United States.¹³⁶

country, as long as it concerns the complainant state. *Id.*

The United States sought to amend the Correction Convention by limiting the right of correction to a report transmitted from the territory of the state wishing to issue a communiqué, but its proposal was rejected because a "foreign correspondent can easily arrange to have a particular dispatch filed from a country other than the one in which he is stationed. . . ." S. DePalma, *Freedom of the Press: An International Issue*, Dep't St. Publ. 3687, International Organization and Conference Series III, No. 43 (released Jan. 1950) at 7.

132. Correction Convention, *supra* note 128, art. 3.

133. *Id.* art. 4.

134. *Id.* art. 5.

135. Twelve countries have signed the Correction Convention, but only six have ratified it. France is the only major power to have signed it. Indeed, France's domestic legislation, the first of which appeared in 1819, provided the inspiration for the Correction Convention as well as most national laws on this issue. Whitton, *Editorial Comment: An International Right of Reply*, 44 AM. J. INT'L L. 141, 142 (1950); see also Donnelly, *The Right of Reply: An Alternative to An Action for Libel*, 34 VA. L. REV. 867, 885 (1948).

136. The print media in the United States might successfully claim a constitutional right to refuse to carry a right of reply. In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the Supreme Court held unconstitutional a Florida statute that

If the communication institution refuses to publish the correction, the aggrieved state is left with alternative rectification procedures that are manifestly inadequate and unrealistic. The first option, in which the complainant state asks the Secretary General of the United Nations to give the communiqué appropriate publicity through the channels at his disposal, offers little assistance. Because no defined institutional structure exists within the United Nations system to accomplish this, such a requirement might simply burden the system with communiqués (both legitimate and otherwise) without any clear procedure by which to evaluate and disseminate them. In addition, even if a legitimate complaint received proper publication through a defined outlet and bureaucratic scheme, nothing approaching the private mass media in range and influence currently exists in United Nations agencies to remedy the damage caused by false or distorted information.

The second remedial alternative—taking the issue to the ICJ—provides an unlikely and costly avenue of redress. Only the most damaging and threatening propaganda will be taken to that court; and once before the court, there is no guarantee that a remedy or rectification will follow. The time required for a hearing and determination is quite long and, as a result, by the time an order issues, the damage will often be irreparable. And even if the damage could be rectified, the offending party might disregard such an order, as recent events have clearly demonstrated.¹³⁷

In principle, the right of correction is a very useful mechanism which should not be dismissed. The fact that the existing Correction Convention has not been effective only suggests that its text should be reformulated. The right of correction is an aspect of the right to communicate, the right to supplement incomplete information, and the right to correct false information. An international right of correction offers a number of potential advantages. First, the remedy (at least the initial remedy) is positive rather than negative. A right of correction renders assistance to the complainant in terms of setting the story straight instead of punishing the offender. It is, therefore, much more compatible with the concept

provided a mandatory right of reply. The Court found that such a measure “operates as a command in the same sense as a statute or regulation forbidding [the newspaper] to publish specified matter” and thus intrudes “into the function of editors.” *Id.* at 256, 258. In *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367 (1969), however, the Court recognized the right of reply in the broadcasting field. *Tornillo* is remarkable in that the opinion simply does not refer to *Red Lion*.

137. See Case Concerning United States Diplomatic and Consular Staff in Teheran (U.S. v. Iran), 1979 I.C.J. 7; 1980 I.C.J. 3. See also Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14.

of the right to communicate than any other remedy. With a right of correction, the general interests of peaceful international relations and the establishment of facts converge with the individual and community's right of freedom of expression. As Jerome Barron put it two decades ago, "[t]he opportunity for counterattack ought to be at the very heart of a [free expression] theory[.]"¹³⁸

Second, any government or private medium knowing that its utterances are subject to such public scrutiny might be more conscious about the accuracy and propriety of its communication. Put simply, this international requirement might make the communicator a bit more self-reflective about his cultural and professional assumptions. The existence of such an institution, if it enjoyed universal membership, might have a salutary long-range effect.¹³⁹ Ideally, the communicator would personally take steps to correct mistakes or to solicit points of view different from the one presented, if that point of view is controversial. But it is precisely because such steps are not normally forthcoming that an institutional arrangement such as the right of correction becomes necessary. Thus, steps should be taken to strengthen that institution both textually and in terms of enforcement.

The utilization of the right of correction should not be seen as restricting freedom of information. In the current international system, the underdeveloped majority lacks the means to present its version of events. Giving this disenfranchized majority some form of access to the international media does not restrict freedom of information and the right of the media. Rather, it opens the media up to an international exchange of views, to an international dialogue, and to a true diversity of sources. In other words, the right of correction offers access to the views of communities in developing countries—views which do not seem to be represented well in the normal course of information production and distribution.

The measures outlined above will become less important as the various communities develop to the point where they possess means of information powerful enough to enable them to disseminate their version of events—where there will be a genuine diversity of views in the international marketplace of ideas. For that to happen, a sustained and coordinated plan in the area of informational infrastructure must be initiated in many of the developing countries. In the meantime, institutions like the right of correction must shoulder the burden of reducing the mono-

138. See Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641, 1658 (1967).

139. See Whitton, *supra* note 31, at 615.

logic tendencies of international communication institutions.

C. *An International Mass Media Council*

The question of enforcement procedures has always proved to be one of the most difficult issues in international law. Noble principles and high hopes often crumble under the heavy pressure of persistent offenders. Nevertheless, an effective international regulatory scheme must address the issue of enforcement and the institutional structures that define it. Although the broader issue of general enforcement procedure demands a detailed policy analysis outside the scope of this Article, the following may provide a useful point of departure: the establishment of an agency within the United Nations charged with investigating complaints regarding the interstate flow of information. Such an agency might take the form of an international mass media council.¹⁴⁰

1. Structure

The concept of a media council is not new. Such councils currently exist, in various forms, in about fifty nations.¹⁴¹ In some nations they are directly established by the government and included as part of the Ministry of Information.¹⁴² In others they are established by the government but comprised of independent members,¹⁴³ or created by the legislature and staffed with non-governmental members.¹⁴⁴ Media councils also appear independently of government sponsorship. They may be established by publishers and journalists;¹⁴⁵ or proprietors and journalists,¹⁴⁶ or by proprietors, editors and journalists.¹⁴⁷ Media councils thus fall into three broad groups: (1) those that either consist of government representatives only or include a good number of government representatives, with the Minister of Information presiding; (2) those which form a single group

140. In a notable address to the General Assembly in 1958, President Eisenhower made a similar suggestion, albeit in a limited context. He stated: "I believe that this Assembly should . . . consider means for monitoring the radio broadcasts directed across national frontiers. . . . It should then examine complaints from . . . nations which consider their national security jeopardized by external propaganda." U.N. GAOR 3rd Emergency Sp. Sess. (733rd plen. mtg.) at 8 (1958), *reprinted in* Whitton, *supra* note 31, at 612.

141. MANY VOICES, ONE WORLD, *supra* note 22, at 245.

142. *E.g.*, Indonesia. *See id.*

143. *E.g.*, Ghana. *See id.*

144. *E.g.*, Italy. *See id.*

145. *E.g.*, Austria and Sweden. *See id.*

146. *E.g.*, Federal Republic of Germany. *See id.*

147. *E.g.*, United Kingdom. *See id.* at 246.

of publishers, owners and journalists; and (3) those in which the general public and the profession are both represented in varying proportion.¹⁴⁸

Media councils represented by the first group are clearly undesirable. A government-controlled council, for example, always runs the risk of degenerating into a mouthpiece through which the government can intimidate a vigilant media. The second option, a media-controlled council, injudiciously relies on the profession to scrutinize itself. Indeed, it is precisely because of existing doubts about media self-regulation that many now call for institutions like the right of correction.

It appears, then, that a truly effective international mass media council should be based on a variation of the third method. The council could be composed of members of the major journalists associations (from both developed and developing countries), media owners, and prominent members of the international community (appointed by the Secretary General) noted for their knowledge and interest in matters of communication as well as for their objectivity and integrity. Among other duties, the council would concern itself with the enforcement of codes of ethics and the implementation of the right of correction.

The council could pattern its proceedings after the type of administrative judicial structures now found in many countries. Seeking the assistance of a media council would prove more advantageous to aggrieved parties than petitioning the Secretary General's office, as prescribed in the existing Correction Convention.¹⁴⁹ As an institution, the council would have the confidence of the expression industry and professional communicators, and would thus meet less resistance. In addition, a body so composed would be more sensitive to the tradition of free expression and could, therefore, more competently discriminate between frivolous complaints and genuine cases of distortion and intentional misrepresentation. It will also provide the profession with an opportunity for self-evaluation since the media should benefit from the critique of its members.

Such a media council could also lessen the resistance from some developed countries, especially the United States, which may consider the right of correction incompatible with constitutional provisions. A well-drafted right of reply with a media council as its chief component may be constitutionally acceptable in the United States. One could argue that

148. See generally *id.* at 245-246 (discussing the establishment and function of media councils); J. C. JONES, *MASS MEDIA CODES OF ETHICS AND COUNCILS: A COMPARATIVE INTERNATIONAL STUDY ON PROFESSIONAL STANDARDS* (1980) (comparing ethics codes of various countries).

149. See *supra* note 128 and accompanying text.

the Supreme Court's decision in *Miami Herald Publishing Co. v. Tornillo*¹⁵⁰ did not prohibit a right of reply as unconstitutional regardless of its form, but rather that the Florida statute was flawed in that it was over-broad, requiring a right of reply for almost all commentary and mandating newspapers to print any reply. A revised international right of correction could avoid such broad access. And the existence of the council, with media representatives on it, is likely to provide access only when it is needed.

A mass media council would also be viewed favorably by the Third World because the council would consciously incorporate representatives from developing countries. The council would thus lessen developing countries' ever present anxiety that international institutional arrangements in this field, and indeed in many other fields, seem to somehow leave them behind.

The very existence of such an institution, and the possibility that the activities of states and communication institutions will be scrutinized by an independent international body, might cause disseminators of information to consider more carefully their more offensive activities. Although some will undoubtedly pursue their activities irrespective of such an institution, most will likely restrain themselves in order to avoid negative publicity.

Critics may contend that the steps here advocated are inadequate to deal with the manifest problems facing developing countries in terms of having access to the international media. Specifically, they may argue that, given the representation of the media owners and journalists associations, many legitimate complaints might be dismissed as frivolous. If this were the case, the council would become less a regulatory or adjudicatory body than a public relations office on behalf of the international media,¹⁵¹ "soothing troubled people [and] reassuring anxious ones."¹⁵²

150. 418 U.S. 241 (1974). See *supra* note 136 and accompanying text. Many have argued that *Tornillo* did not foreclose access altogether. See generally J. BARRON, PUBLIC RIGHT AND THE PRIVATE PRESS (1981); B. SCHMIDT, FREEDOM OF THE PRESS VS. PUBLIC ACCESS (1976); Note, *Access to the Press: A Teleological Analysis of a Constitutional Double Standard*, 50 GEO. WASH. L. REV. 430 (1982).

151. For a similar observation about a national media council, see O'Malley, *Regulating Contradictions: The Australian Press Council and the "Dispersal of Social Control,"* 21 LAW & SOC. REV. 83, 100 (1987). For a general theoretical argument that such agencies might in fact represent those they ostensibly regulate, see M. EDELMAN, THE SYMBOLIC USES OF POLITICS (1964); Abel, *The Contradictions of Informal Justice*, in THE POLITICS OF INFORMAL JUSTICE (1982).

152. O'Malley, *supra* note 151, at 100 (quoting 1983 AUSTRALIAN PRESS COUNCIL ANNUAL REPORT 51).

The danger of this happening is real, but it is not inevitable. It will depend in part on the integrity, influence and commitment to broaden the right to communicate of those appointed to the council—especially the non-media members. But it will also depend on the amount of support given to the council by various members of the United Nations. In any case, even among press owners and journalists, there is some diversity of views about the notion of press responsibility and the concept of the right to communicate. One can never assume the existence of a totally monolithic media.¹⁵³ Even the journalist members of the council will likely have different approaches to the issue. Thus, the council would be a useful step for their expression and, because the journalists and owners on the council would represent different cultures and political backgrounds, the fear of a monolithic press is less troublesome. Even if the council is not as effective as desired in terms of adjudicating most complaints, its existence would certainly curtail some of the excesses of the industry.

2. Procedure

A mass media council could provide relief under a fairly simple procedural framework. When a government, institution, or individual alleges that a publication or broadcast has either falsely represented or grossly distorted the truth, it must first inform the particular medium of its specific complaints and ask that medium to correct its mistake or supplement the incomplete information disseminated. Alternatively, the aggrieved party may request the opportunity to present its version of the events or supplement the incomplete information in a piece similar in length to the offending piece to be carried by that institution. If the institution refuses to carry the piece, then the complainant can appeal to the council with its allegation. If the council decides that no legitimate case exists, then for all practical purposes the case ends. Of course, diplomatic avenues as well as other judicial processes (*e.g.*, a defamation suit) would still be available. On the other hand, if the council decided that a case existed and that the piece was false, distorted, offensive or damaging, the council would ask the medium to correct it or give the complainant a prompt opportunity to present its version. The medium should be ex-

153. A failure to recognize the internal diversity of capital, especially that coming out of the competitive dimension of different corporations, leads to a wholly inadequate analysis of the nature of the problem at hand. For a critique of the tendency of radicals to see a unity of capital in all spheres of social life and social interaction, see Jones, *Class Expression versus Social Control? A Critique of Recent Trends in the Social History of 'Leisure,'* 4 HISTORY WORKSHOP 162 (1977).

pected to publish only those replies submitted by the offended party within a reasonably short time and limited to information needed to correct the offending statement. In addition, the medium should not be required to carry a reply if that reply is in violation of the rights of third parties or constitutes libel under the law in which the medium operates.

3. Fact versus Opinion

Unlike article 2(2) of the existing Correction Convention,¹⁵⁴ a worthwhile right of correction must not distinguish between fact and opinion. This distinction is in many ways fictitious, for it suggests that facts concern cognition of the objective world, which apparently remains constant regardless of the identity of the observer. Opinion, on the other hand, is regarded as a normative assessment of what has been observed, which is likely to vary according to the observer's social, economic and cultural position. Within this positivist understanding, facts exhaust all cognition and opinions and values are non-cognitive attitudes ill-suited to rational discussion or resolution. Existing rights of reply or correction that distinguish fact from opinion are based on that assumption and generally exclude the latter.¹⁵⁵

However prevalent the practice may be, the distinction between fact and opinion is misleading. Except in the most trivial circumstances, what one chooses to regard as fact is less a mirror of the world "out there" than a result of a complex process of selection and interpretation informed by an invisible framework that Edward Said calls "communities of interpretation,"¹⁵⁶ and that C. Wright Mills refers to as "the cultural apparatus."¹⁵⁷ News does not simply occur; pictures and ideas do not

154. See *supra* note 128 and accompanying text.

155. In the United States, for example, the Supreme Court has drawn the distinction between fact and opinion in libel cases. These cases indicate that the Court protects any and all forms of opinion, and declines to protect what it calls "false statements of fact." In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), the Court asserted:

Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

Id. at 339-40. See also *Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1127 (1985). In *Ollman*, the D.C. Circuit acknowledged that at times "the richness and diversity of language" makes it difficult to make a distinction between assertion of fact and the expression of opinion. *Id.* at 977-78.

156. E. SAID, *supra* note 78, at 33-64. See also E. SAID, *THE WORLD, THE TEXT AND THE CRITIC* (1983).

157. C. W. MILLS, *The Cultural Apparatus*, in *POWER, POLITICS AND PEOPLE* 406 (1967).

merely spring from some ephemeral reality into our eyes and minds. In selecting and appraising events, everyone is to a large extent saddled with the particular conceptions of personality and society suggested by the institutional arrangements within which he functions.

The fact versus opinion distinction is, therefore, not helpful. Every fact is in many ways an opinion, for facts are informed by "implicit [and unscrutinized] conceptions of personality and society."¹⁵⁸ The distinction is thus used to deny the possibility "that alternative descriptions [and hence alternative conceptions of society and personality] are possible in addition to those offered by the results of normal inquiries."¹⁵⁹ To employ a certain method of inquiry and to choose certain ways of describing ourselves and the social world in which we live naturally involves adopting an attitude, an expression of opinion. Because no methodology or language is value-free, the distinction between fact and opinion becomes utterly implausible and totally limiting. It makes it impossible for one to see that discovering facts is, to use Rorty's expression, "one project of edification among others,"¹⁶⁰ a choice with normative content.

Once it is admitted that the distinction between fact and opinion is unpersuasive, then it makes very little sense to provide for a right of correction that deals exclusively with so-called facts. The right of correction considered here shall therefore encompass both facts and opinions.¹⁶¹

4. Enforcement Powers

Considering that the right of correction should not distinguish fact from opinion, and also that the council should have the authority to instruct the medium to carry a reply or correction about an opinion or a fact, the next issue concerns the council's proper course of action in the event that a medium refuses to comply with an order to publish or broadcast. The council might pursue various options depending on the seriousness of the publication and the number of prior offenses by the particular institution. It might simply publicize the offense and the general activities of the institution to exert pressure on the offender. Or, if the activity appears particularly egregious, it might urge major journalist

158. R. UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* 353 (1987).

159. R. RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* 363 (1979). Such "normal" inquiries are usually identified with current institutional arrangements.

160. *Id.* at 364.

161. The French right of reply also makes no distinction between fact and opinion. See Errera, *Press Law in France*, in *PRESS LAW IN MODERN DEMOCRACIES: A COMPARATIVE STUDY* 137 (P. Lahav ed. 1985).

organizations and agencies not to cooperate with that institution. Alternatively, the council might seek assistance from the government or the national media council (or its equivalent) of the country in which the offending institution resides. The council could inform the latter institutions about the alleged activities and the council's verdict and ask them to exert pressure on the institution to desist from carrying false or distorted information. Any variation of these procedures will enable the council to take sanctioning steps.

The council might also play the role of appraising and reporting annually upon the performance of the international media. This might serve both as a means of informing the international community about the ethical and functional standards of the media on the international level as well as offering another means of pressuring the media to raise its ethical and functional standards. This approach could prove quite useful, for no matter how arrogant and dismissive an institution may appear, it will always seek to avoid a negative evaluation.¹⁶²

VIII. RIGHT OF CORRECTION AND MEDIA COUNCIL AS ASPECTS OF ACCESS TO THE INTERNATIONAL MEDIA

[W]e want institutions which are both free and responsible.¹⁶³

Some have a tendency to see institutions as having a life of their own apart from the human beings who created them and the purposes they are designed to serve. In the United States, for example, the constitutional prohibition against any law abridging the freedom of the press¹⁶⁴ is sometimes taken to mean that the press has a constitutive rather than an instrumental right. The press is seen to have this right by virtue of its existence as an institution¹⁶⁵ rather than because freedom of the press is

162. "[I]t is one of the most persistent and pervasive phenomena of international affairs that no nation state . . . wants to stand before the world community as a law-breaker." Larson, *supra* note 23, at 441. The state may deny the existence of a law or interpret it in a suitable way, but it will not want to be seen as breaking the law. *Id.*

163. R. WILLIAMS, COMMUNICATIONS 151 (1967).

164. U.S. CONST. amend. I.

165. The most absolutist position was held by Justices Hugo Black and William Douglas. Although the absolutist position did not command a majority of the Court, it has influenced the direction of the Court and the parameters of the debate in a significant way. See *Konigsberg v. State Bar*, 366 U.S. 36, 61 (1961) (Black, J., dissenting) ("[I] believe that the First Amendment's unequivocal command that there shall be no abridgment of the rights of free speech and assembly shows that the men who drafted our Bill of Rights did all the balancing that was to be done in this field."). *Ginzburg v. United States*, 383 U.S. 463, 491 (1965) (Douglas, J., dissenting) ("[T]he First Amendment

a prerequisite for the achievement of certain human values. If one sees the right as constitutive, and if the right has been conferred on the institution through the positive laws, then the mere invocation of that right closes the debate. On the other hand, if one sees the right as instrumental, then the invocation of that right, even when that right was granted through positive laws, does not end the inquiry. Another question must follow: Has the institution utilized the right to achieve the human values for which it was created? If the answer is no, then public intervention to make the institution more responsive and sensitive to those human values is essential.

Thus, to treat the freedom of the press as inviolably constitutive is to be ahistorical and oblivious to the fact that such institutions are created, and "freedom" is conferred up on them, so that they may enable others to realize certain values. It serves to reify these institutions, to see them and the manner of their organization as inevitable rather than as the product of human action with certain purposes in mind.¹⁶⁶

Once the freedom of the press is seen in an instrumental sense, the next question becomes: What purposes is this right meant to serve? Traditionally, three purposes have been identified with this right: the discovery of truth, the promotion of self-government and the promotion of self-determination.¹⁶⁷ We might add also the unique role of the international media in creating understanding among peoples of the world. Propaganda, as practiced by the international media (both intentionally and structurally) in relation to developing countries, does not advance the achievement of any of these goals. In fact, in many ways it negates them.

Consequently, insofar as the right of correction and the international media council are seen as ways of ensuring that people from developing countries have access to the international media, such public intervention

allows all ideas to be expressed—whether orthodox, popular, offbeat, or repulsive.”)

166. See P. BERGER & T. LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* 89 (1967); LUKÁCS, *Reification and the Consciousness of the Proletariat*, in *HISTORY AND CLASS CONSCIOUSNESS* 83 (R. Livingstone trans. 1971) (Reification is the “apprehension of human phenomenon as if they were things, as a non-human facticity”); see also Pitkin, *Rethinking Reification*, 16 *THEORY AND SOCIETY* 263 (1987).

167. For a “truth”-based defense of free expression, see J. S. MILL, *ON LIBERTY* 75-118 (G. Himmelfarb ed. 1974). See also *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Perhaps the most prominent defense of free expression on the grounds of self-government appears in A. MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* 3-78 (1960). For an examination of “self-development” as the central meaning of free expression, see Baker, *Scope of the First Amendment Freedom of Speech*, 25 *UCLA L. REV.* 964 (1978); see also Baker, *The Process of Change and the Liberty Theory of the First Amendment*, 55 *S. CAL. L. REV.* 293 (1982).

is not only permissible but it is also necessary if these goals are to be realized. An international right of correction will provide the opportunity for truth to emerge, since the excluded segment of society will have had an opportunity to speak.¹⁶⁸ And considering that international propaganda negates a people's right to self-determination and self-governance, then a right of correction designed to partially correct that cannot be seen as violative of press rights, but rather as a step toward making the press sensitive to the values on which its right is premised.¹⁶⁹

Even in the United States, where there is a tendency to reify the right of the press, scholars increasingly express the opinion that access is essential to any theory of freedom of expression.¹⁷⁰ This opinion is based on the fact that the market through which ideas are meant to compete has failed.¹⁷¹ As Jerome A. Barron argues: "We should reject the premise that press freedom automatically provides free expression for the entire society."¹⁷² This observation is even more relevant in terms of the international media, for in the international arena the market not only fails, but that failure is overdetermined by political and cultural differences which affect the inclusion and exclusion of views.

At bottom, the international right of correction and the media council are concerned with the democratization of the international communication process. They promote creative participation by various members of the international community in the distribution and consumption of social and political communication, especially when the information concerns them. This creative participation is an important dimension of self-determination, for self-determination implies, at the minimum, that a nation or a community has the opportunity to shape events that will have an impact on its social and political existence.

168. One cannot refer to the emergence of truth when the views of a significant segment of international society have never been included in the public forum.

169. Providing the institutional means through which falsehoods may be corrected will surely reduce international misunderstanding and deter conflict.

170. The Supreme Court does not yet share this view with regard to print media, although it does recognize such a right with respect to the broadcasting media. *See Red Lion Broadcasting v. Federal Communications Commission*, 395 U.S. 367, 389 (1969) ("There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.").

171. See Barron, *supra* note 138, at 1641; Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405 (1986).

172. Barron, *The Search for Media Accountability*, 19 SUFFOLK U.L. REV. 789, 789 (1985).

IX. CONCLUSION

In both its intentional and structural dimensions, international propaganda has seriously undermined the capacity of developing countries to define their identities and priorities and to conduct their affairs. This negation of self-determination has two dimensions. First, it denies the intended victim and its people the right and capacity to conduct their affairs. Second, it denies the rest of the world the right to accurate information needed to properly evaluate the intended victim. Nothing is more injurious to a group's right to communicate than to be intentionally misled. If it is true, as Jurgen Habermas argues, that the human species "maintains itself through the socially coordinated activities of its members and that this coordination has to be established through communication,"¹⁷³ then undermining that communicative action with intentional propaganda virtually negates the target group's right to reproduce itself rationally, which inherently requires undistorted communications.

The structural dimension of propaganda is no less injurious. By selectively informing, it achieves many of the same results as intentional propaganda, in relation to both the party of discourse and the consuming audience. Indeed, structural propaganda is often more effective in undermining the right of self-determination than intentional propaganda simply because it is presented as part of the normal flow of information and is therefore rarely subject to close scrutiny. Simply put, there is a pathology of cognition among the international media. This pathology prevents the communicator from reflecting upon the cultural, political and economic assumptions that inform his reporting decisions.¹⁷⁴

To understand the necessary responses to both types of propaganda, one must consider the dialectical aspect of the problem: propaganda is at once an instrument and a result of domination. It is an instrument because propaganda is used to impose objectives and contours on other human beings. It is a result because the capacity to propagandize and manipulate emerges out of a structural condition that endows the manipulator with political, economic and cultural capital "superior" to that of the manipulated.

The antidote to this manipulation must, therefore, consist of long-term and short-term measures to be taken simultaneously. The long-term ap-

173. 1 J. HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* 397 (1984). See also P. FREIRE, *supra* note 52, at 99 ("To impede communication [namely, to distort and falsify it] is to reduce men to the status of things. . . . [P]eople cannot be truly human apart from communication, for they are essentially communicative creatures.").

174. For a discussion of the pathology of cognition, see A. GOULDNER, *THE DIALECTIC OF IDEOLOGY AND TECHNOLOGY* 50 (1976).

proach must confront the structural conditions that make propaganda acceptable and, indeed, indispensable. In addition, short-term steps must be taken to lessen the manipulative impact of propaganda and restrain its dissemination while the structural conditions are remedied.

The long-term structural solution involves a restructuring of international economic and political arrangements that enable one section of the international community to have a monopoly over cultural capital. Thus seen, the importance of a new economic order to the emergence of a new world information and communication order becomes apparent. Specifically, the development of communication infrastructures in developing countries will enable those communities to disseminate, both internationally and domestically, their version of occurrences and events. This must be viewed as an urgent priority of the international community, for active participation in international society will lessen the impact of propaganda. In other words, to be an active participant in defining one's environment is to be less vulnerable to external manipulation.

Of the short-term steps considered in this Article, international endeavors (as opposed to national and unilateral actions) should be considered and encouraged. Due to the ineffective nature of national action and because of the negative implications and consequences of such actions on international freedom of information, cooperative measures are preferable.

International action consistent with both the concept of freedom of information and the goal of minimizing state control of the communicative process would provide developing countries with access to the international media. The right to communicate has, as its correlative, the right to supplement incomplete information and to correct it when it is wrong. The right of correction and the mass media council should be part of that access.

If we take the right of self-determination seriously, then we must neither condone propaganda nor resign ourselves to the unfortunate fact that it has been a staple diet of international relations. Given the highly destructive potential of international propaganda, resignation is a response we cannot afford. We must instead continue to explore the possibility of an institutional arrangement that will be sensitive to both the tradition of freedom of expression and the fact that propaganda can seriously undermine peoples' right to constitute their communities and run their affairs. This Article has sought to initiate the process of exploring such institutions.