

PROPAGANDA VIA SATELLITE¹

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Abstract

This paper deals with international regulation of propaganda via satellite. The author gives the international definition of propaganda and explains the applicable law by analyzing space law, human rights law, communications law, the law of peace and security and international penal law.

Introduction

In the context of the cold war, the debate over television broadcasting via satellite was, in the beginning, strongly linked to the question of propaganda. The socialist countries, lead by the USSR, hammered out the same idea at every international conference related to the issue: the satellite was nothing more than a vehicle for further distribution of bourgeois propaganda¹. The question of propaganda via satellite was thus placed at the center of the debate by the States who had, at the time, the most recourse to its use². At the time, the socialist countries were concerned that their internal communication systems would become porous to occidental propaganda. The legitimacy of these States had been founded, in great part, on the control of information and the closing of

borders to all communications coming from abroad. The concerns over propaganda via satellite are still present today as evidenced by the concerns surrounding television broadcasting by satellite. In 1999, the Turkish government attempted to prohibit the retransmission of the Kurdish channel MedTV broadcasted by Intelsat and Eutelsat, accusing the channel of acting as a vehicle for separatist propaganda. More recently, following the events of 11 September 2001, the US government strongly criticized the information channel Al Jazeera, presenting it as a vector of anti-American propaganda and an organ for inciting terrorism. Finally, the inauguration by Israel in July 2002 of a satellite channel broadcasting in Arabic to the Middle East was intended to combat war propaganda which, according to the Hebrew State, was being broadcast by 140 Arabic channels inciting hatred for Israel across the rec eiving populations³. This paper deals with the international regulation of propaganda via satellite and will first define propaganda according to international law (1) before going on to study the applicable law (2).

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1. The notion of propaganda in international law

According to a study conducted by UNESCO, "the notion of propaganda implies efforts deliberately organized with a view to influence the attitudes and behavior of others, even if this influence is more often hoped for rather than anticipated, desired rather than foreseen"⁴. Propaganda is, by its nature, a planned and voluntary action. Continuity and duration are indispensable to its efficacy. The action of one sole channel cannot qualify as propaganda unless it is demonstrated that the channel represents the unique source of information for the targeted population. The USA was therefore incorrect in claiming that Al Jazeera's broadcasting of video footage of Osama Ben Laden during the bombings over Afghanistan in the autumn of 2001 amounted to terrorist propaganda. In another respect, propaganda can be distinguished from information by its goal – the former is intended to influence, the latter is intended to enlighten. Al Jazeera had not, at any time, employed conscious efforts to influence the populations of the receiving countries.

International law condemns, above all, war propaganda, which is defined as any organized utilization of the media with the intention of provoking international armed conflict. However, the mobilization of its population by a State victim of an armed aggression does not constitute an act of propaganda. International law equally prohibits subversive propaganda which is intended to alter the internal order of another State and which could therefore be comparable to interference in domestic affairs. That said, a State party to an international armed conflict could legally carry out propaganda activities intended to discourage the population and demoralize the troops of the enemy camp. International law also prohibits other

specific forms of propaganda, for example, genocide propaganda, apartheid propaganda and racist propaganda. However, the defamatory propaganda proposed by J. B. Whitton⁵, was never, for its part, recognized by international law even though certain States currently consider themselves to be victims. Beijing, for example, considers that "the American media defamed China in a systematic, organized and planned manner"⁶. Although international law does attach sanctions to defamation, this is more general and independent of the notion of propaganda.

2. The applicable law

Although space law is vague regarding the prohibition of propaganda (a), human rights law (b), communications law (c) the law of peace and international security (d) as well as international penal law (e) condemn propaganda initiatives.

a. Space law

Space law contains no direct provisions on the prohibition of propaganda. However, several initiatives have attempted to incorporate regulation of propaganda into the texts relating to space. In the Soviet proposal for the declaration of principles on space, proposed to COPUOS in 1962, the final version of which was adopted in 1963, paragraph 5 condemned the use of space for the purposes of war propaganda, or propaganda considered to be nationalist, racist or which provoked hate amongst nations⁷. According to Moscow, without a prohibition on propaganda, all satellite communication systems would be naturally compromised. In parallel, Brazil considered that television via satellite would contribute to the dissemination of a false and degrading image of Third-world countries. Its delegation proposed to

include in the declaration a prohibition on propaganda favoring war, the class struggle, racial or religious propaganda and propaganda which is offensive to a third party country⁸. The United States however rejected any reference to propaganda and favored the adoption of a very general text without mention of specific space activities⁹. A similar debate saw the USSR and the USA in opposition in regard to the drafting of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. In the end, the definitive versions of both texts, the 1963 Declaration¹⁰ and the 1967 Treaty¹¹, contain no direct clauses prohibiting propaganda. However, their preambles do refer to the United Nations General Assembly Resolution 110(II) of 3 November 1947 which condemns propaganda. Even the resolution adopted by the General Assembly in 1982 relating to direct broadcasting by satellite makes no reference in its articles to the question of propaganda¹².

It therefore comes down to looking to general international law, in conformity with article III of the Outer Space Treaty, to identify the relevant rules for regulating propaganda via satellite.

b. Human rights law

The Universal Declaration of Human Rights of 10 December 1948¹³ and the International Covenant on Civil and Political Rights of 16 December 1966¹⁴ recognize, in their respective articles 19, the right to freedom of information without consideration of borders which applies to all mediums of distribution, including satellite, and to all content including that which may shock or disturb. In this light alone, the use of satellites for broadcasting propaganda would be legal. However, the 1966 Covenant imposes two series of restrictions on this freedom. Firstly, article

19 § 3 states that freedom of information can be subject to certain restrictions which must be expressly set down by law and which are necessary for the safeguarding of national security or public order. Secondly, article 20 § 1 provides that propaganda in favor of war is prohibited by law. The same provision is made in article 20 § 2 for propaganda aimed at inciting national, racial or religious hate which constitutes incitement toward discrimination, hostility or violence. Several reservations were made, however, in relation to this article¹⁵. On the question of incitement to racism, the 1966 Covenant must be read in the light of the International Convention on the Elimination of All Forms of Racial Discrimination, concluded on 21 December 1965¹⁶, which condemns, in its article 4, "all propaganda ... based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form...".

c. Communications law

The Convention of 23 September 1936 on the Use of Broadcasting in the Cause of Peace is the only international treaty exclusively devoted to propaganda and disinformation¹⁷. The first article of the Convention prohibits subversive propaganda, whereas article 2 prohibits war propaganda. By virtue of article 6, it is up to the States to ensure and verify that the provisions of the Convention are applied through appropriate instructions and regulations addressed to broadcasting services placed under their direct control, either by including these in the clauses of the constitutive charters of autonomous national broadcasting institutions, or in the conditions imposed upon concessionary companies or the rules applicable to other private enterprises. At the international level, article 7 of the Convention provides

for a progressive mechanism for the peaceful settlement of disputes: diplomatic negotiations, appeal to the good offices of the International Committee on Intellectual Co-operation, arbitration and judicial settlement¹⁸.

d. The law of peace and international security

Given that the principal aim of the United Nations is to maintain international peace and security, it was normal for the Organization to take a stance on the question of propaganda. The UN has maintained a firm and clear position on this point in prohibiting propaganda in so far as it threatens international peace. First, propaganda, regardless of whether it relates to war or subversion, is considered to be a violation of article 2 § 4 of the United Nations Charter¹⁹. Secondly, the General Assembly rapidly condemned propaganda content through the adoption of specific resolutions. On 3 November 1947, the General Assembly adopted, in conformity with the Charter, Resolution 110 (II). This text was written in continuation of the UN Charter and, aiming to preserve future generations from the scourge of war²⁰, condemned all forms of propaganda which are either designed or likely to produce or encourage any threat

to peace, breach of the peace or act of aggression. A second text, Resolution 381(V) on the condemnation of propaganda against peace was adopted on 17 November 1950²¹.

e. International penal law

International penal law condemns propaganda in two respects. Firstly, it sanctions against genocide propaganda. On 9 December 1948, in reaction to the genocide perpetrated by the German Nazi regime which had blatantly used the media for genocide propaganda, the Convention on the Prevention and Punishment of the Crime of Genocide was signed²². Recent history has shown us that this technique is far from being abandoned. Most notably in Rwanda, the media was used as a means to incite genocide through the broadcasts of *Radio et Télévision libre des Mille Collines*²³. Article III of the Genocide Convention prohibits "direct and public incitement to commit genocide". Similarly, apartheid propaganda or direct incitement to its commission are prohibited by article III of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly in its Resolution 3068 (XXVIII) of 30 November 1973.

¹ See notably: B. G. DUDAKOV, "Some International Legal Issues on the Direct Television Broadcast Satellites", *Proceedings of the 14th Colloquium on the Law of Outer Space*, IISL, Brussels, Belgium (1971), 1972, p. 165.

² In effect, at the start of the 1960's, the expenditure of the USSR and the States of the Warsaw Pact for propaganda purposes amounted to 1.5 billion dollars per year - 2 % of their GNP and 20 times more than the expenditure of the United States for the same cause - F. BENHALLA, *La guerre radiophonique*, Paris, PUF, 1983, p. 28.

³ *Satellite Week*, 1 July 2002, p. 6.

⁴ T. MARTELANC, S. SPLICHAL, B. PACLIC, A. FERLIGOJ, V. BATAGELJ, M. D. MURKO, *Les émissions radiodiffusées vers l'étranger et la compréhension internationale - émissions étrangères destinées à la Yougoslavie*, Etudes et documents d'information n° 81, Paris, UNESCO 1978, p.7.

⁵ J. B. WHITTON, "Propaganda and International Law", *RCADI*, 1948-1, volume 72, pp. 543 - 658.

⁶ D. XIAOHUA, "Pourquoi et comment les médias américains œuvrent à diffamer la Chine", *Bejin Information*, n° 31, 4 August 1997, pp. 9-13.

⁷ For the initial Soviet proposal see: UN Doc. A/AC.105/C.2/L.1; for the modified Soviet proposal see: UN Doc. A/AC.105/C.2/L.6.

⁸ *Report of the COPUOS*, 5th Session, UN Doc. A/5549/add.1 (1963), p. 21.

⁹ UN Doc. A/AC.105/C2/SR.1, p. 8.

¹⁰ Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space (General Assembly resolution 1962 (XVIII) of 13 December 1963).

¹¹ *UNTS*, volume 610, p. 205.

¹² UN Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting (resolution 37/92 of 10 December 1982).

¹³ The Declaration is annexed to UNGA Resolution 217 A (III).

¹⁴ *UNTS*, volume 78, p. 277.

¹⁵ Denmark, Finland and Sweden declared they did not want to apply this provision, judging that to vote against war propaganda risked limiting freedom of expression. Luxembourg stated, for its part, that article 20 must be applied taking into account freedom of expression. Other States like Malta, the United Kingdom and Switzerland considered that they were not obliged to legislate in the domain covered by article 20 § 1. The United States noted that article 20 could not oblige them to adopt measures which restrain the freedom of expression and association protected by the Constitution and the laws of the United States.

¹⁶ *UNTS*, volume 1500, p. 161 – The text was adopted by the General Assembly in its Resolution 2106 A (XX).

¹⁷ This Convention was the work of the League of Nations. The League of Nations examined the question of broadcasting propaganda in 1926 resulting in a Resolution adopted by the consultative and technical committee for communication and transport (SDN, *JOSdN*, 1926, p. 1191). In September 1933, its Assembly authorized the Committee on Intellectual Cooperation (the equivalent of UNESCO) to prepare a proposal. The Treaty, adopted in 1936, was not signed by Germany, Italy and Japan who operated at the time propagandist policies and refused to become parties.

¹⁸ On 17 December 1954, the UN General Assembly adopted Resolution 841 (IX) relating to the International Convention on the Use of Broadcasting in the Cause of Peace. In its first paragraph, the text asks States Parties to the Convention if they will accept that the functions originally conferred by the Convention on the League of Nations be transferred to the United Nations.

¹⁹ This article provides that "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, or in any other manner inconsistent with the purposes of the United Nations".

²⁰ Preamble, para. 1

²¹ The text clarifies, in paragraph 2, the notion of propaganda against peace, by including two situations : incitement to conflict or acts of aggression and measures which tend to isolate people from all external contact.

²² *UNTS*, volume 78, p. 277.

²³ This station, known as "Hate Radio", was used between 1 January and 31 July 1994 to broadcast programs conceived to provoke inter-ethnic hate and to incite the population to kill or commit acts of violence against the Tutsi minority as well as against others for reasons of political alliance.