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THE RESPONSIBILITY OF STATES FOR INTERNATIONAL PROPAGANDA

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The tendency in recent world history toward the establishment of political parties based on class or racial ideologies in which no place of respect is given to established territorial boundaries has greatly intensified the problem of the responsibility of states in connection with international propaganda. Two main questions arise: (1) Are states themselves obliged under international law to refrain from spreading propaganda in a foreign country hostile to its government? and (2) Are they obliged to use due diligence to prevent private individuals and organizations from engaging in such activity? ¹ The purpose of this study is to seek the answer to these questions through an analysis of the sources of international law referred to in Article 38 of the Statute of the Permanent Court of International Justice: (a) international conventions, (b) diplomatic exchanges, giving evidence of international custom, (c) general principles embodied in municipal laws and judicial decisions, and (d) the attitude of writers on international law. Treatment of the subject will begin here with the period of the French Revolution and will be limited to peace-time political propaganda. The problem is, of course, much older and broader than these limits suggest, but it is believed that their extension would not contribute materially to the purpose at hand.

INTERNATIONAL CONVENTIONS

Treaties in which the parties pledge themselves not to spread propaganda hostile to each other are numerous. The obligation is probably implicit in various treaties to which all the Great Powers were parties during the period of the French Revolution and Napoleon, as well as in a number of subsequent treaties providing for the acceptance of the principle of non-interference in the internal affairs of other countries. Since the World War the obligation has been made explicit in treaties and agreements which the Soviet Union has made with some fifteen of the states with which it has established

¹The principle is well established that an obligation upon a government to abstain from certain activities does not necessarily involve an obligation to prevent private individuals within its territory from engaging in them. This is indicated by the fact that the Hague Conventions allow governments to permit their subjects to carry on activities forbidden to themselves (see particularly the Convention Concerning the Rights and Duties of Neutral Powers in Naval War, Arts. 6 and 7), and by the attitude of various writers (see, for instance, Clyde Eagleton, *The Responsibility of States in International Law* (1928), p. 79).

diplomatic relations, in treaties between Great Britain and Italy, and in the Convention Concerning the Use of Broadcasting in the Cause of Peace (signed at Geneva, September 23, 1936),² which has been ratified by some 19 states. Only Greece and Serbia, in agreeing in 1867 and 1868 to spread propaganda in neighboring Turkish territory, have formally contradicted the principle on which these other treaties rest.³

Even more numerous are treaties dealing with governmental responsibility for private propaganda activities. In some of them the acceptance or imposition of such a responsibility is clear and unchallenged, as in the case of the treaty between France and Russia in 1801,⁴ the press law of the Germanic Confederation in 1819,⁵ the treaty of 1881 between Austria-Hungary and Serbia,⁶ and at least eleven treaties put into effect by 39 different states since 1900.⁷ In addition to these treaties, the obligations of which apply to the activities of all individuals under the jurisdiction of the respective parties, some 15 of the Central and South American states have at various times been parties to agreements concerning only political refugees, the obligation being to prevent them from living in border regions or engaging in activities which might disturb the peace of the country from which they fled.⁸

In other treaties the acceptance or imposition of the responsibility in question is doubtful, or at least has been denied, as in the case of a group of treaties between the Great Powers concluded following the events of 1789

² Printed in this JOURNAL, Supp., Vol. 32 (1938), p. 113.

³ S. Th. Lascaris, "*La première alliance entre la Grèce et la Serbie (Le traité de Voeslau du 14-26 août 1867)*," *Le monde slave*, N.S., Vol. 3 (1926), pp. 430, 436.

⁴ Art. 3 of this treaty reads in part as follows:

"The two contracting parties, wishing in so far as it is in their power to contribute to the tranquillity of their respective governments, mutually oblige themselves not to permit any of their subjects to carry on any correspondence whatever, direct or indirect, with the internal enemies of the existing government of the two states, to propagate there principles contrary to their respective constitutions, or to incite disorders." (Martens, *Recueil de traités* [1817-1836], Vol. 7 [1800-1803], p. 387.)

⁵ J. H. Robinson (ed.), "The Restoration and the European Policy of Metternich, 1814-1820," *Translations and Reprints from the Original Sources of European History* (University of Pennsylvania, 1894), Vol. 1, Ser. 1, p. 17.

⁶ A. F. Pribram, *The Secret Treaties of Austria-Hungary, 1879-1914* (1920), pp. 51-53.

⁷ The wording of the pledges in these treaties is not uniform, and, of course, the obligation in each case is only between the contracting parties. The treaties included in this list may be found at the following sources: League of Nations Treaty Series: Vol. 2, No. 52, p. 97; Vol. 9, No. 257, p. 249; Vol. 64, No. 1511, p. 387; Vol. 87, No. 1971, p. 215; Vol. 174, No. 4044, p. 133; Vol. 186, No. 4319, p. 303; Vol. 190, No. 4402, p. 27; Martens, *Nouveau recueil général de traités*, 3rd ser.: Vol. 3, pp. 94-101; Vol. 30, pp. 689-690; Vol. 34, p. 331; Pan American Union, *Law and Treaty Series*: No. 7, p. 6; No. 8, p. 6; Documents on International Affairs, 1937, p. 529; League of Nations, *Official Journal*, 1933, Part 1, p. 549.

⁸ Probably with the same end in view, Napoleon forced five neighboring principalities to refuse asylum to French émigrés; Austria and Russia in 1792, and Austria, Prussia, and Russia in 1834 made similar agreements among themselves.

and in the case of those of the Soviet Union with its border states and the United States.⁹

Obviously, conclusions concerning the requirements of international law must await an examination of the other sources; on the basis of the above review alone, it can hardly be said that enough states have agreed on any one obligation to transform it into a rule of international law.

INTERNATIONAL CUSTOM

A study of diplomatic exchanges concerning propaganda reveals wide differences of opinion as to the requirements of international law. Dealing in turn with the two questions posed in the introductory paragraph, we will first review the instances in which the existence of an obligation has been affirmed and then those in which it has been denied either in theory or in practice.

The existence of an obligation on the part of states not to spread propaganda in a friendly foreign country hostile to its government has frequently been affirmed. Although during the period of the French Revolution references to the requirements of international law in this connection were rare, the National Assembly itself proclaimed that France would not use propaganda against neighboring states even as a measure of reprisal,¹⁰ and, as an assumption basic to broader complaints, Austria and Prussia early indicated that they regarded official French propaganda as inadmissible; in the end, the development in France of a desire to lead other peoples to "liberty" through "armed propaganda" and the monarchical fear of revolutionary principles and the French example were major causes of the outbreak of war in 1792.¹¹ A somewhat similar development occurred in the

⁹ In paragraph 4 of the Soviet-American agreement, the U.S.S.R. declared that it would be its "fixed policy":

"Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions." (Exchange of Communications between President Roosevelt and M. Litvinoff, People's Commissar for Foreign Affairs, Nov. 16, 1933, this JOURNAL, Supp., Vol. 28 (1934), pp. 3-4.)

This clause is closely modeled after agreements made by the Soviet Union with most of its border states, the proper interpretation of which is also in doubt. In fact, the latter were not taken to require the suppression of, or restraint on, the activities of the Third International, and most of the contracting parties seem to have acquiesced tacitly in this interpretation. But whether the Soviet Union could rightly say that the interpretation given to these agreements was necessarily carried over to the agreement with the United States is doubtful, particularly when an opposite interpretation is so clearly supported by the text when studied in connection with official statements of the aims of the International.

¹⁰ *Archives parlementaires de 1787 à 1860* (1862-), Vol. 35, pp. 442-443; Vol. 36, p. 618.

¹¹ *Ibid.*, Vol. 42, pp. 217-218; J. Debrett (ed.), *A Collection of State Papers Relative to the War against France (1794-1802)*, Vol. 1, pp. 21, 28; A. R. von Vivenot (ed.), *Quellen zur Geschichte der deutschen Kaiserpolitik Oesterreichs während der französischen Revolutionskriege*,

relations between France and Great Britain. In May, 1792, Britain was informed that the French King would disavow any of his agents in friendly countries who sought to provoke revolt against the established order, for such action would be a violation of international law,¹² but in November of the same year the National Assembly issued a decree encouraging revolt abroad by providing that France would grant fraternity and aid to all peoples wishing to recover their liberty.¹³ Vigorous protests from England¹⁴ first induced the Executive Council to attempt to explain the decree away,¹⁵ and finally on April 13, 1793, led to its repeal; but before the latter occurred, war had been declared, brought on to some extent by the difficulties over propaganda.¹⁶

The repeal of the French decree took the form of a declaration of the National Convention "that it will not interfere in any way in the government of other powers."¹⁷ This principle secured the theoretical approval of the other states, but they gave it a curious interpretation. On the assumption that the mere example involved in establishing a non-monarchical government amounted to constructive interference in their affairs, these Powers (excepting England) claimed the right themselves to intervene. If this were not already clear, it was made explicit in the circular note transmitted by the Holy Alliance Powers following the conference at Troppau and designed to explain their grounds for suppressing the revolts in Naples and Piedmont:

The Powers are exercising an incontestable right in taking common measures in respect to those states in which the overthrow of the government through a revolt, even if it be considered simply as a dangerous example, may result in a hostile attitude toward all constitutions and legitimate governments.

And further, they quite consistently claimed that

the exercise of this right becomes an urgent necessity when those who have placed themselves in this situation seek to extend to their neighbors the ills which they have brought upon themselves and to promote revolt and confusion around them.¹⁸

1790-1801 (1883-1890), Vol. 1, pp. 470-474; Vol. 2, p. 378. Cf. J. H. Clapham, *The Causes of the War of 1792* (1889).

¹² *Archives parlementaires de 1787 à 1860*, Vol. 58, p. 133. ¹³ *Ibid.*, Vol. 53, p. 474.

¹⁴ W. T. Laprade, *England and the French Revolution* (1909), p. 106; Albert Sorel, *L'Europe et la Révolution française* (1889-1904), Vol. 3, pp. 226-227; Annual Register, Vol. 35 (1793), "State Papers," p. 117; *Papiers de Barthélemy, ambassadeur de France en Suisse 1792-1797* (1886-1910), Vol. 1, pp. 433, 436, 441.

¹⁵ *Archives parlementaires de 1787 à 1860*, Vol. 56, p. 104; Vol. 57, p. 14; Vol. 58, pp. 141, 152.

¹⁶ See King George's statement to Parliament, Jan. 28, 1793, in Annual Register, Vol. 35 (1793), "State Papers," p. 128. Laprade (*op. cit.*) builds a forceful case to show that the decree of Nov. 19, 1792, and the propaganda issue constituted an excuse rather than a reason for war.

¹⁷ *Archives parlementaires de 1787 à 1860*, Vol. 62, p. 3.

¹⁸ Robinson, *op. cit.*, p. 21.

But in the opinion of the British Government, these statements involved "an exception to general principles [which] never can, without the utmost danger, be so far reduced to rule as to be incorporated into . . . the institutes of the law of nations."¹⁹

Following the revolution of 1830 the French Government declared that it would "do nothing which might tend to disturb the domestic peace" of other states²⁰—a position which Metternich and others clearly felt that France was obliged to take²¹—and practically the same principle was enunciated by France after the revolution of 1848.²²

In the years before the World War the challenge to this principle by Serbia led first to a requirement in 1909 that it pledge to change its policy so as to live in the future with Austria-Hungary on the basis of good neighborly relations,²³ and then to the ultimatum of 1914 which brought on the war. In the latter, Austria-Hungary demanded that Serbia "repudiate all idea of interfering or attempting to interfere with the destinies of the inhabitants of any part whatever of Austria-Hungary"; that it "eliminate without delay from public instruction in Serbia . . . everything that serves or might serve, to foment the propaganda against Austria-Hungary"; and that it "remove from the military service, and from the administration in general, all officers and functionaries guilty of propaganda against the Austro-Hungarian Monarchy."²⁴ Moreover, as indicated below, additional demands were made with regard to the propaganda activity of private individuals and organizations. In reply, Serbia claimed that since 1909 it had not attempted to change the political and legal state of affairs in Bosnia and Herzegovina and therefore had nothing to repudiate, but did agree to the demand concerning public instruction and to the last demand named in so far as persons in the military service were concerned.²⁵ Both Austria and Serbia therefore accepted the position that governments must refrain from engaging in propaganda activities hostile to friendly foreign governments.

As already indicated, the extensive propaganda activity of the Soviet Government in the first few years of its existence brought such widespread protest that it was forced to make formal treaty pledges renouncing official

¹⁹ Great Britain, Foreign Office, *British and Foreign State Papers* (1841–), Vol. 8 (1820–1821), p. 1162.

²⁰ Richard Metternich-Winneburg (ed.), *Aus Metternichs nachgelassenen Papieren* (1880–1884), Vol. 5, p. 19.

²¹ *Ibid.*, pp. 18, 116, 122, 129, 173, 576; Eugène de Guichen, *La révolution de juillet 1830 et l'Europe* (1917), pp. 163, 179; François P. G. Guizot, *Mémoires pour servir à l'histoire de mon temps* (1858–1867), Vol. 4, p. 36.

²² Martens, *Nouveau recueil général* (1843–1875), Vol. 12 (1848), p. 69.

²³ M. Boghitchewitsch, *Die auswärtige Politik serbiens, 1903 bis 1914* (1928–1931), Vol. 2, p. 87.

²⁴ Great Britain, Foreign Office, *Collected Diplomatic Documents Relating to the Outbreak of the European War* (1915), pp. 5–8.

²⁵ *Ibid.*, pp. 506–514.

propaganda activity. Bela Kun's use of propaganda as head of the short-lived Communist régime in Hungary brought protests from Austria and Switzerland.²⁶ The National Socialist Government of Germany has on several occasions maintained that it does not spread political propaganda abroad,²⁷ and in July, 1936, it explicitly agreed with Austria that

Each of the two governments views the existing internal political structure in either State, including the question of Austrian National Socialism, as the internal affair of that respective State and agrees to refrain from attempting either directly or indirectly to interfere therewith.²⁸

As far as the United States is concerned, it has consistently maintained that governments must not spread propaganda hostile to friendly foreign governments. This principle was stated by President Jackson when, referring to Mexico, he declared that "any act on the part of the Government of the United States, which would tend to foster a spirit of resistance to her government and laws, whatever may be their character or form . . . would be unauthorized and highly improper."²⁹ And many decades later, the United States, asserting that the obligations of diplomatic intercourse "include . . . abstention from hostile propaganda by one country in the territory of the other,"³⁰ refused to recognize the Bolshevik Government until it gave guarantees that the principle would be observed.

With respect to radio propaganda directed from one country into the territory of another, numerous protests have been made, sometimes resulting in expressions of regret,³¹ sometimes in claims that the broadcasts were in fact directed toward listeners within the broadcasting country,³² and sometimes in denials of responsibility.³³ The very brief published reports concerning these diplomatic exchanges scarcely permit one to draw any conclusion concerning the attitude of the states involved toward the obligations imposed by international law.

As intimated, the principle that states must themselves refrain from spreading in a friendly foreign country propaganda hostile to its government has frequently been challenged, at least in practice. Soon after the outbreak

²⁶ Albert Kaas and Fedor de Lazarovics, *Bolshevism in Hungary* (1931), pp. 179-182.

²⁷ *New York Times*, Dec. 10, 1933, IV, 3:7; Jan. 24, 1938, 4:2.

²⁸ *Ibid.*, July 12, 1936, 20:2.

²⁹ United States, Executive Documents, 1836-1837 [24th Cong., 2d sess., Serial 301], Vol. 1, Doc. 2, p. 58.

³⁰ American Foundation, Committee on Russian-American Relations, *The United States and the Soviet Union* (1933), p. 39. Letter from Charles Evans Hughes to Samuel Gompers, July 19, 1923.

³¹ See, for example, *New York Times*, March 30, 1939, 9:5.

³² *Ibid.*, Feb. 3, 1934, 6:3.

³³ See the example cited by W. A. Robson, "The Progress of Socialization in England," *Foreign Affairs* (N. Y.), Vol. 11 (April, 1935), p. 506.

of the French Revolution, Spain,³⁴ Sardinia,³⁵ the Elector of Trèves,³⁶ and Russia³⁷ were all engaged in, or were accomplices to propaganda activity hostile to France, and France officially spread propaganda hostile to other countries. In the early 1830's French government officials were accomplices to propaganda activity against friendly Italian governments,³⁸ and Cavour instigated revolutions designed to unite Italy.³⁹ The Tsarist Government was involved in the activities of the Hetairia in Greece from 1815 to 1820,⁴⁰ and acted openly in spreading propaganda in Bulgaria hostile to its government, particularly from 1880 to 1885.⁴¹ During the half-century preceding the Balkan wars, official Bulgarian, Greek, Rumanian, and Serbian propaganda competed in Macedonia to undermine the authority of the Ottoman Empire,⁴² and Serbia was for a time active in Bosnia-Herzegovina as well.⁴³ Propaganda activities of a minor sort against Soviet Russia have been engaged in by Great Britain⁴⁴ and the United States⁴⁵ (in each case prior to the granting of recognition), and the Soviet Government carried on an extensive official propaganda campaign over a period of several years designed to promote world revolution,⁴⁶ a campaign in which Communist Hungary contributed to the extent of its powers.⁴⁷ Similarly, in spite of official statements to the contrary, Nazi Germany has sought diligently to spread the

³⁴ Hermann Baumgarten, *Geschichte Spaniens zur Zeit der französischen Revolution* (1861), p. 338.

³⁵ Ernest Daudet, *Histoire des conspirations royalistes du Midi sous la Révolution (1790-1793)* (1881), pp. 155-156.

³⁶ *Ibid.*, p. 118.

³⁷ *Ibid.*

³⁸ C. Vidal, *Mazzini et les tentatives révolutionnaires de la Jeune Italie dans les états sardes (1833-1834)* (1927), pp. 10, 12; *idem*, *Louis-Philippe, Metternich et la crise italienne de 1831-1832* (1931), pp. 55-58.

³⁹ Paul Matter, *Cavour et l'unité italienne*, Vol. 3, 1856-61 (1927), pp. 198-199 and *passim*. Cavour's methods were described by Mussolini to the Chamber of Deputies in March, 1938, for the purpose of extenuating Hitler's conduct in Austria (New York Times, March 17, 1938, 6:3).

⁴⁰ George Finlay, *A History of Greece from Its Conquest by the Romans to the Present Time* (1877), Vol. 6, p. 100; Grégoire Yakschitch, *L'Europe et la résurrection de la Serbie (1804-1834)* (1917), p. 377.

⁴¹ R. Léonoff (ed.), *Documents secrets de la politique russe en Orient, 1881-1890* (1893) *passim*.

⁴² Luigi Villari (ed.), *The Balkan Question* (1905), pp. 138-141, 149, 157, 187, 195; H. N. Brailsford, *Macedonia: Its Races and Their Future* (1906), pp. 121, 188; H. W. V. Temperley, *History of Serbia* (1919), p. 257; L. von Südländ, *Die südslawische Frage und der Weltkrieg* (1918), pp. 367-368. Cf. the treaties between Greece and Serbia, cited *supra*, note 3.

⁴³ Heinrich Friedjung, *Das Zeitalter des Imperialismus, 1884-1914* (1922), Vol. 2, pp. 204-209; Boghitchewitsch, *op. cit.*, Vol. 3, p. 27; B. E. Schmitt, *The Coming of the War, 1914* (1930), Vol. 1, pp. 120, 179, 182-183, and *passim*.

⁴⁴ Great Britain, *Parliamentary Debates (Official Report)*, 5th Ser. (1909-), Vol. 138, pp. 2043-2044.

⁴⁵ New York Times, Aug. 14, 1920, 1:6.

⁴⁶ See the statement of Chicherin in Nikolai Lenin and Leon Trotsky, *The Proletarian Revolution in Russia*, ed. by Louis C. Fraina (1918), p. 409.

⁴⁷ Kaas and Lazarovics, *op. cit.*, pp. 125, 179.

principles of National Socialism, particularly in neighboring countries.⁴⁸ It is important, however, that when pressed, none of these governments has claimed that its actions were based on right; on the contrary, when their activities have aroused serious protest they have uniformly recognized an obligation not to spread propaganda in a friendly foreign country hostile to its government.

The above facts give some justification for the conclusion that in spite of numerous violations, the principle that states are obliged to refrain from spreading propaganda in a friendly foreign country hostile to its government is, in international custom, "accepted as law."⁴⁹

The existence of an obligation on the part of states to use due diligence to prevent private individuals and organizations from spreading propaganda from their territory hostile to friendly foreign governments has also been affirmed frequently in diplomatic exchanges. As a rule no clear distinction between public and private activities was made during the period of the French Revolution, but it is plain that the Austrian position was that the French Government, which tolerated and even encouraged private activities,⁵⁰ was obliged to prevent them.⁵¹ This position was also taken by Switzerland,⁵² and the principle was championed by Napoleon when, in a dispute with England in 1802, he asserted that a "general maxim of the law of nations" obliged governments not only to prevent all activities designed to promote revolution in other countries, but also to "prevent, repress, and punish every attack which might [by means of the press] be made against the rights, the interests, and the honour of foreign powers."⁵³ Although rejected by Britain both in 1802 and later, practically the same position was taken, following the Congress of Vienna, by Austria, Prussia, and Russia,

⁴⁸ This statement is based on the assumption that the government is responsible for the actions of the Nazi party—in view of the fact that they have been legally united—and for press and radio utterances, in view of the fact that they are strictly controlled. Cf. Lawrence Preuss, "International Responsibility for Hostile Propaganda against Foreign States," this JOURNAL, Vol. 28 (1934), esp. pp. 666-667.

⁹ Note should be made of the fact that this statement refers to the spreading of propaganda *within foreign countries*. Governments are free in certain circumstances to issue and circulate within their own territory pronouncements which other governments regard as hostile to their interests (for instance, a declaration that another government is guilty of aggression), but, aside from releasing the news via the radio and press, it is doubtful whether direct, official steps could legally be taken to make a foreign people cognizant of such pronouncements, unless it be done as a measure of reprisal. The latter basis for action would probably exist in connection with the illustration cited in view of the obligations of the Pact of Paris and other instruments. On this question see Quincy Wright, "The Denunciation of Treaty Violators," this JOURNAL, Vol. 32 (1938), pp. 526-535.

⁵⁰ See especially *Papiers de Barthélemy*, Vol. 1, pp. 4-5; Albert Sorel, "*Un Général diplomate au temps de la Révolution. I. Dumouriez aux affaires étrangères*," *Revue des deux mondes*, Vol. 64 (1884), pp. 310-311.

⁵¹ See especially Vivenot, *op. cit.*, Vol. 1, pp. 376, 568.

⁵² *Papiers de Barthélemy*, Vol. 1, pp. 433, 436, 441.

⁵³ Annual Register, Vol. 45 (1803), "State Papers," p. 661.

as indicated by their policy toward Italy and Spain and by the obligations which they forced Switzerland, France, and the Free City of Cracow to accept. In 1823 Switzerland was compelled to issue a decree denying asylum to political refugees, prohibiting any foreigner from engaging in propaganda or other activities hostile to foreign governments, and forbidding the publication of any material offensive to them.⁵⁴ After the July revolution in 1830, the three autocratic Powers insisted that France must not permit the use of its territory as a base for spreading hostile propaganda abroad, the latter country admitting that the demand was in conformity with the requirements of international law.⁵⁵ Finally, Cracow was forced to insert in its constitution a provision calling for the punishment of all subversive acts directed against any of the three Powers just as if they had been directed against Cracow itself.⁵⁶

Following the revolutions of 1848, responsibility for private propaganda activities was imputed by Austria, France, Prussia, and Russia to England⁵⁷ and Switzerland,⁵⁸ and at the Paris Conference of 1856 France raised complaints against Belgium.⁵⁹ Switzerland was forced again to acknowledge the obligation, and Belgium soon passed a law in which penalties were fixed for revolutionary activities directed against foreign governments,⁶⁰ but England explicitly denied any responsibility.⁶¹ Bismarck invoked the principle in his disputes with France and Belgium over the activities of Catholic bishops from 1873 to 1878, asserting as an "incontestable principle of international law that a state may not permit its nationals to disturb the domestic peace of another state,"⁶² but his claim was not admitted. Austria maintained that Serbia's pledge of March 31, 1909, involved such an obligation, and in her ultimatum of July, 1914, demanded that in addition to giving assurances concerning its own behavior, the government condemn all propaganda against Austria-Hungary and announce that it would rigorously prosecute persons engaged in spreading it; this applied not only to propaganda spread abroad but also to all material published in Serbia. To these demands Serbia substantially agreed.⁶³ It should be noted, however, that neither country referred in this connection to the requirements of international law.

⁵⁴ Anton von Tillier, *Geschichte der Eidgenossenschaft während der sogenannten Restaurationsepoche* (1848-1850), Vol. 2, p. 257, n. 1.

⁵⁵ Guizot, *op. cit.*, Vol. 4, p. 36; *Archives parlementaires de 1787 à 1860*, Vol. 81 (March 26, 1833), p. 615; Vol. 82 (March 30, 1833), pp. 33-34, 36.

⁵⁶ Martens, *Nouveau recueil général*, Vol. 10 (1846), p. 133.

⁵⁷ Br. and For. State Papers, Vol. 42 (1852-1853), pp. 402, 410-411, 415-416, 418-419, 425.

⁵⁸ Martens, *op. cit.*, Vol. 11 (1847-1848), pp. 142-149, 156; Vol. 14 (1843-1852), p. 561.

⁵⁹ Br. and For. State Papers, Vol. 46 (1855-1856), pp. 124-125.

⁶⁰ Paul Servais, *Les codes et les lois spéciales les plus usuelles en vigueur en Belgique* (1937), "Law of March 12, 1858," Art. 3, p. 285.

⁶¹ Br. and For. State Papers, Vol. 42 (1852-1853), pp. 422-423.

⁶² *Archives diplomatiques (1861-1914)*, 1876, Vol. 2, p. 298.

⁶³ Collected Diplomatic Documents, pp. 506-514.

Since the World War, imputations of responsibility for private propaganda activity have been made to Soviet Russia by the United States, on the basis of the agreement of 1933, and by other states, sometimes without special reference to treaty obligations.⁶⁴ Yugoslavia has secured the suppression of propaganda groups in Germany,⁶⁵ and the Soviet Union and Poland both protested to Czechoslovakia against its toleration of activities directed against them.⁶⁶ Japan has leveled similar charges against China,⁶⁷ and over many years a number of states have protested against toleration of propaganda activities by the United States, more or less on the basis of a claim of right.⁶⁸ Most explicit of all the protests published recently was that sent by the German Government to the Governing Commission of the Saar Territory in February, 1934. Alleging that the propaganda activities of refugees carried on within the Saar had made the territory "simply a base for political operations against Germany," the Foreign Minister declared that "this situation [is] incompatible with the generally recognized principles of international law. . . ." ⁶⁹

In contrast to the above, Spain, Sardinia, and the Elector of Trèves tolerated private propaganda against the French revolutionary government, and France followed the same policy with regard to private propaganda directed against other countries. As indicated, Russia from 1815 to 1820 even encouraged such propaganda on the part of the Hetairia. Again, for a short time after the revolution of 1830, France, and at various times Switzerland, permitted similar activities. In the winter of 1851-1852, Great Britain explicitly denied any obligation with regard to private propaganda,⁷⁰ and France and Belgium tacitly did the same in connection

⁶⁴ New York Times, Sept. 4, 1935, 15:6. As a rule, however, states imputing a responsibility to the U.S.S.R. for acts of the Communist International allege that it is connected in one way or another with the government.

⁶⁵ R. W. Seton-Watson, "King Alexander's Assassination: Its Background and Effects," *International Affairs*, Vol. 14 (1935), p. 30.

⁶⁶ New York Times, Apr. 4, 1938, 1:2; May 7, 1938, 5:6; July 29, 1938, 6:5; Dec. 19, 1938, 1:5; Dec. 20, 1938, 26:3; Jan. 12, 1939, 12:6.

⁶⁷ League of Nations, Appeal from the Chinese Government in Virtue of Article 15 of the Covenant, Explanatory Note Communicated by the Japanese Government (Geneva, March 2, 1932; Official No. A. Extr. 6. 1932. VII).

⁶⁸ For example, see United States Department of State, *Papers Relating to the Foreign Relations of the United States (1852-), 1911*, pp. 392-393.

⁶⁹ League of Nations Official Journal, Vol. 15, Part 1 (No. 5, 1934), "Fifty-seventh Periodical Report of the Governing Commission," p. 459.

⁷⁰ *Supra*, note 61. In 1928, however, the British Government requested Prince Carol to leave the country when it appeared that he intended to send to Rumania by aeroplane copies of a manifesto printed in London in which he urged the ousting of King Michael and his own recall to the throne. It is probable that this action was taken for purely political rather than legal reasons; the Home Secretary in Parliament ignored a question concerning the requirements of international law (Parl. Debates, Vol. 217, pp. 175, 390, May 8 and 10, 1928; London Times, May 8, 1928, 16:1; May 9, 1928, 16:1).

with Bismarck's protests in the 1870's. Russia and Serbia especially gave free reign to private activities in the Balkans. Great Britain, The Netherlands, and Switzerland permitted the First International to operate from their territory with considerable freedom,⁷¹ and the countries which took repressive measures against it did so more out of national considerations than in fulfillment of any international obligation.⁷² Most of the countries of Central and Western Europe permitted the Second International to conduct its activities freely, and Austria, France, Germany, Great Britain, Sweden, and Switzerland were all bases for the operations of the Russian revolutionaries seeking to overthrow the Tsar.⁷³ The Soviet Union has steadfastly maintained that it is not responsible in any way for private propaganda activities, as represented by the program of the Third International, and, with a few exceptions, other states have acquiesced in its position. Nazi Germany has permitted propaganda activities of a private nature, and Czechoslovakia, Great Britain, the United States, and other countries have tolerated the spreading of propaganda from their territory into Germany.⁷⁴ It is a fixed policy of the United States to deny any obligation to prohibit private propaganda activities; generally the plea has been that the laws permit no other course, but on at least one occasion, involving a protest from Mexico concerning the propaganda which Madero was sending across the border from Texas, the Secretary of State declared explicitly that "the mere carrying on of a revolutionary propaganda by writing or speaking does not constitute an offense against the law of nations. . . ." ⁷⁵

It may, therefore, be said that the principle that states must use due diligence to prevent the use of their territory as a base for the spreading of propaganda hostile to foreign governments has never, in general practice, been accepted as law. Most of the countries of Europe, but not all, accepted it during the first half of the last century, and on occasion states have upheld it since that time, but practice has not been sufficiently uniform to establish a positive rule of law.

THE GENERAL PRINCIPLES OF LAW

In order to determine what principles of law relative to propaganda activities are generally recognized, the writer has examined the penal codes

⁷¹ G. M. Stekloff, *History of the First International* (1928), *passim*.

⁷² *Archives diplomatiques* (1874), Vol. 3, esp. pp. 86, 204, 212, 242-243, 251; Otto Fürst von Bismarck, *Gedanken und Erinnerungen* (1898), p. 569; F. F. Count von Beust, *Memoirs* (1887), Vol. 2, p. 273.

⁷³ N. N. Popov, *Outline History of the Communist Party of the Soviet Union* (1934), Vol. 1, pp. 102, 136, 184, 236, 269, 281.

⁷⁴ See, for instance, the report concerning the British National Council of Labor's manifesto to the German people in the *New York Times*, July 2, 1939, 1:1.

⁷⁵ U. S. Foreign Relations, 1911, p. 398.

or special legislation of 49 countries,⁷⁶ the common law of Great Britain and the United States, the press laws of these countries as compiled by the British Foreign Office,⁷⁷ and their diplomatic and consular laws as compiled by Professors Feller and Hudson.⁷⁸ The results of this investigation will be presented by dealing first with laws relating to libel and then with those relating to other offenses.

Of the 51 states whose legislation was studied, 28 give protection from libel to foreign sovereigns or heads of states, 3 protect sovereigns only, and the remaining 20 ignore the subject altogether. Of the 7 Great Powers Japan and the Soviet Union apparently give the heads of foreign states no protection at all from libel;⁷⁹ Germany gives protection to sovereigns, but not to presidents of republics;⁸⁰ and Great Britain and the United States in the common law (enforceable in American State courts, but not in the Federal courts), apparently grant protection only if the libel involves a

⁷⁶ The countries included in this list, together with the date of publication of the material studied, are as follows:

Afghanistan, 1928	Egypt, 1936	Panama, 1932
Argentina, 1922	Finland, 1890	Paraguay, 1914
Austria, 1852	France, 1934	Peru, 1927
Belgium, 1937	Germany, 1938	Poland, 1932
Bolivia, 1923	Guatemala, 1932	Portugal, 1903
Brazil, 1929	Haiti, 1914	Rumania
Bulgaria, 1896	Honduras, 1906	Salvador, 1904
Canada, 1939	Hungary, 1910	Siam, 1908
Chile, 1937	Italy, 1930	Spain, 1934
China, 1935	Japan, 1936	Sweden, 1895
Colombia, 1934	Latvia, 1934	Switzerland, 1938
Costa Rica, 1924	Lithuania, 1903 (Russian code)	Turkey, 1926
Cuba, 1922	Mexico, 1938	U.S.S.R., 1934
Czechoslovakia (Law of 1933)	Netherlands, 1883	Uruguay, 1889
Denmark, 1901	Nicaragua, 1891	Venezuela, 1928
Dominican Republic, 1926	Norway, 1902	Yugoslavia (Serbia), 1911
Ecuador, 1889		

Special statutes concerning this topic were found in the legislation of Czechoslovakia and France. The Rumanian penal code was not available, but that country is included in this compilation in view of the fact that press laws which were available seem to cover the subject.

⁷⁷ The Press Laws of Foreign Countries (1926).

⁷⁸ A. H. Feller and Manley O. Hudson (eds.), *A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries* (1933).

⁷⁹ Japan grants special protection if the foreign sovereign or president is within its jurisdiction (W. J. Sebald [tr.], the Criminal Code of Japan [1936], p. 67, Art. 90). For the Russian penal code see Great Britain, Foreign Office, *The Penal Code of the Russian Socialist Federal Soviet Republic. Text of 1926, with amendments up to December 1, 1932* (1934).

⁸⁰ Otto Schwarz, *Strafgesetzbuch mit allen wichtigen Nebengesetzen und Verordnungen* (1936), p. 174, Art. 103 and comment thereon. The draft German penal code of 1925 proposed to eliminate the discrimination between foreign sovereigns and other heads of states, but then, following the Japanese practice, to grant protection to such persons only when they are in Germany (*Amtlicher Entwurf eines allgemeinen deutschen Strafgesetzbuchs nebst Begründung. Veröffentlicht auf Anordnung des Reichsjustizministeriums* [1925], pp. 14-15, Art. 111).

threat to the public peace.⁸¹ Only France⁸² and Italy⁸³ appear willing⁸⁴ to grant thorough protection. On the basis of these facts, the conclusion can hardly be drawn that municipal laws reveal deference for any principle of international law requiring the protection of the heads of foreign states from libel.

Thirty-seven of the 51 states, on the other hand, give special protection from libel to resident foreign diplomats, and presumably many if not all of the others grant them the same protection as is afforded to private individuals (a course which is followed by both Great Britain and the United States). The tentative conclusion may therefore be drawn that protection of resident foreign diplomats from libel is so generally afforded by municipal law as to indicate a response to a requirement of international law. That special protection is necessary, however, does not seem to be indicated.⁸⁵

One state grants protection to other states as such, three to foreign governments, five to heads of governments, and the common law of Great Britain and the United States, as indicated, permits prosecution for any libel, but only if it involves a threat to the peace.

It appears, therefore, that if any general principle is established in connection with libel, it is that protection be afforded to resident foreign diplomats.

In connection with offenses other than libel, an examination of the same material leads to the conclusion that states may be divided into four categories. In the first are the few which grant, or on the basis of reciprocity are willing to grant, protection to foreign countries against certain hostile propaganda activities. Most noteworthy in this group is Germany, whose penal code, after defining treasonable acts, stipulates that other countries also shall be protected from them if reciprocal treatment is accorded.⁸⁶ In the second category are some 27 states which provide penalties for activities which endanger existing peaceful relations with other states. One provision of this kind calls for the punishment of individuals for acts which expose the state to a declaration of war or its citizens to reprisals, and is found in the

⁸¹ *King v. Gordon*, 22 Howell's State Tr., esp. pp. 233-234; *King v. Vint*, 27 *ibid.*, esp. p. 641; *King v. Peltier*, 28 *ibid.*, esp. pp. 617-618; "Trial of William Cobbett for Libel. In the Supreme Court of Pennsylvania. November, 1797," Wharton State Tr., esp. p. 325. In the case of *King v. Antonelli and Barberi* (1906) (70 J. P. 4), the British court ruled that the common law does not afford protection to foreign governments or sovereigns against seditious libel, but referred approvingly to the earlier decisions on criminal libel.

⁸² Henry Bourdeaux (ed.), *Les codes d'audience Dalloz*, 20th ed. (1934), p. 371, Art. 36 of the law of July 29, 1881.

⁸³ Great Britain, Foreign Office, Penal Code of the Kingdom of Italy (1931), p. 84, Art. 297.

⁸⁴ The Italian law applies only "in so far as the foreign law guarantees, reciprocally, to the Head of the Italian State . . . equality of penal protection." The German code contains a similar stipulation.

⁸⁵ This latter conclusion is also reached by J. S. Reeves (Reporter), "Diplomatic Privileges and Immunities," this JOURNAL, Supp., Vol. 26 (1932), p. 94.

⁸⁶ Dr. Dalcke, *Strafrecht und Strafverfahren*, 30th ed. (1938), pp. 86-87, Art. 102. Cf. the Belgian law, cited *supra*, note 60.

penal codes of France,⁸⁷ Spain,⁸⁸ and a number of other states. Another is of the type enacted by Switzerland⁸⁹ in 1934 providing for the suspension of "newspapers and periodicals which, exceeding the limits of criticism in a particularly grave manner, threaten to disturb the good relations of Switzerland with other states."⁹⁰ In the third category are the Soviet Union, which prohibits only counter-revolutionary activity against any "toilers' state" even if it is not a part of the U.S.S.R.,⁹¹ and a number of states which grant special protection to their allies in war. Finally, in the fourth group are the remaining states, including Great Britain, Japan, and the United States, whose common law or penal codes grant no protection at all to foreign states against hostile propaganda activity.

It is, therefore, obvious that the attitudes which states express in national legislation toward offenses other than libel vary so widely as to present only negative evidence concerning the requirements of international law.

OPINIONS OF WRITERS

Publicists agree that governments are bound not to spread propaganda in a friendly foreign country hostile to its government. Thus Stowell is of the opinion that calling on the subjects of a foreign state to revolt "is a violation of the sovereign rights of a friendly state . . .";⁹² and Martens writes that "each state has a right to require that foreign powers shall not incite the people of its territory to rise against it."⁹³ Far from there being any challenge to this principle, some of the earlier writers even went farther, suggesting that states must not even establish a government on the basis of principles hostile to other governments⁹⁴—a position which is now generally rejected.⁹⁵

⁸⁷ Arts. 84 and 85. It is doubtful, however, whether these articles could be invoked solely because of propaganda activities which lead to diplomatic complications. See S. Rapoport, "*Attentats et complots contre la sûreté de l'Etat*," *Répertoire de droit international*, Vol. 2 (1929), pp. 237-239.

⁸⁸ Code of 1932, Art. 134.

⁸⁹ India, Italy, Sweden, and several other countries also have legislation of this kind.

⁹⁰ *Feuille fédérale*, 86^e année, 1934, Vol. 1, p. 867. Switzerland has in fact acted against the publication within its own borders of propaganda hostile to foreign governments, as indicated by its expulsion of at least two alien journalists (London Times, March 13, 1934, 13:7; *Journal des Nations* [Geneva], Dec. 15, 1936; Jan. 11, 14, 16, 23, 25, 1937; March 2, 1937), and by its application of the law quoted in connection with the *Journal des Nations* and other Swiss papers (London Times, Feb. 7, 1936, 13:4; New York Times, Oct. 8, 1938, 9:2).

⁹¹ Art. 58 of the code of the R.S.F.S.R., cited *supra*, note 79.

⁹² E. C. Stowell, *Intervention in International Law* (1921), p. 378.

⁹³ F. F. Martens, *Traité de droit international* (1883-1887), Vol. 1, sec. 74. Cf. M. de Vattel, *Le droit des gens* (1916), Bk. 2, ch. 4, sec. 56; P. Pradier-Fodéré, *Traité de droit international public européen et américain* (1885-1906), Vol. 1, sec. 238; W. E. Hall, *A Treatise on International Law* (1924), p. 339, sec. 91.

⁹⁴ See, for instance, Sir Robert Phillimore, *Commentaries upon International Law*, 3d ed. (1879-1889), Vol. 1, sec. 394; T. Funck-Brentano and Albert Sorel, *Précis du droit des gens* (1877), p. 216.

⁹⁵ See, for instance, Hall, *op. cit.*, pp. 339-340. At Cannes in 1922 the Supreme Council adopted a resolution declaring:

With respect to the existence of an obligation to prevent individuals from spreading propaganda abroad hostile to friendly foreign governments, writers have not been so clear or unanimous. Many of the earlier writers made broad statements to the effect that each state was obliged to prevent those subject to its jurisdiction from engaging in activities injurious to other governments or in plots or propaganda which might disturb the public peace in other countries. For instance, Rivier declared, "States have the right to require of any State which . . . permits enemies of public order to make of its territory a *foyer* of conspiracy or propaganda against them that it . . . suppress their operations."⁹⁶ During the last several decades, however, the tendency has been to reject such principles and to absolve governments from any responsibility for private propaganda activities. Hall evidenced this tendency by taking the view that a state has a right "to live its own life in its own way" as long as it does not lend "the shelter of its independence to persons organising armed attack upon the political or social order elsewhere established,"⁹⁷ and later Gemma expressed the opinion that "no responsibility whatever" can fall on a government for private propaganda activities.⁹⁸ This view is especially emphasized by those few writers who have paid particular attention to the problem.⁹⁹

Writers who deal with the question of protecting foreign states and their officials from libel generally impute a measure of responsibility to governments. Thus Dickinson refers to "the existence of an international obligation to protect foreign governments locally against defamations."¹⁰⁰ On the other hand, Oppenheim, after listing a series of actions which violate the dignity of states, including libel and slander on their heads, suggests that "while a Government of a State, its organs, and its servants are bound in this

"Nations can claim no right to dictate to each other regarding the principles on which they are to regulate their system of ownership, internal economy, and government. It is for every nation to choose for itself the system which it prefers in this respect."

⁹⁶ Alphonse Rivier, *Principes du droit des gens* (1896), Vol. 1, No. 52, p. 266, sec. 20. Cf. Carlos Calvo, *Le droit international théorique et pratique* (1896), Vol. 3, sec. 1298; Heinrich Triepel, *Völkerrecht und Landesrecht* (1899), p. 340; Paul Fauchille, *Traité de droit international public* (1922), Vol. 1, secs. 255, 441 (24), and 472; L. Oppenheim, *International Law*, 4th ed. (1928), Vol. 1, sec. 316.

⁹⁷ Hall, *op. cit.*, p. 50, sec. 7; cf. p. 269, sec. 65.

⁹⁸ Scipione Gemma, "*Les gouvernements de fait*," *Recueil des Cours de l'Académie de Droit International* (1924), Vol. 3, p. 365.

⁹⁹ H. Lauterpacht, "Revolutionary Activities by Private Persons against Foreign States," this JOURNAL, Vol. 22 (1928), pp. 105-130; *idem*, "Revolutionary Propaganda by Governments," *Transactions of the Grotius Society*, Vol. 13, Problems of Peace and War (1928); Preuss, *loc. cit.*, pp. 649-668. The work of these writers is reflected in both the fourth and fifth editions of Oppenheim's *International Law*.

¹⁰⁰ E. D. Dickinson, "The Defamation of Foreign Governments," this JOURNAL, Vol. 22 (1928), p. 844. Cf. E. C. Stowell, "Respect Due to Foreign Sovereigns," this JOURNAL, Vol. 31 (1937), pp. 301-302.

matter by rigid duties of respect and restraint, it is doubtful whether a State is bound to prevent its subjects from such acts. . . .”¹⁰¹

CONCLUSION

The conclusion to be drawn from the above review is that a state is bound under international law to refrain from spreading propaganda in a friendly foreign country hostile to the latter's government, but that aside from special treaty provision it is under no responsibility with respect to private propaganda activities proceeding from its territory. This conclusion is directly upheld by the evidence presented in connection with the study of the practice of states and by the opinions of more recent writers, and it is in harmony with the evidence presented in connection with the study of international conventions and the general principles of law accepted by civilized nations.

¹⁰¹ L. Oppenheim, *International Law*, 5th ed. (1937), Vol. 1, pp. 230-231. Cf. *idem*, *International Law* (1912), Vol. 1, p. 222; also Phillimore, *op. cit.*, Vol. 2, sec. 103, p. 129.