

Introduction to the Reissue

THIS BOOK was published over two decades ago. Events that have happened since then call for updating and some revision of its contents. After briefly exploring these developments, the more pertinent changes relevant to each section of the original study will be discussed section by section.

The more significant events since its appearance do not call for far-reaching alterations. Yet the past couple of decades have witnessed tremendous advances in technology, increasing manifold the size, speed, and efficiency of mass communication to the great advantage of propaganda strategists. Contentious debates have raged over a New International Information and Communication Order in the United Nations Educational, Scientific and Cultural Organization (UNESCO) which, in some measure, have contributed to the departure of the United States from UNESCO. Issues such as the regulation of direct television broadcasting by satellite have not advanced very far. Steps have been taken toward defining *aggression*, *ideological aggression*, and *war propaganda*.

GREAT ADVANCES IN COMMUNICATION TECHNOLOGY

Communication technology has advanced most dramatically during the past few decades and the advance is still in progress. As a result of the advance there has been a great upsurge in the means for point-to-point and mass communication, and for preparing material for dissemination by the mass media. The new devices render the conduct of operations of ideological strategy tremendously swift, efficient, and massive.¹

The speed of the printing process has risen to unimaginable levels. In the past, composing by hand could be at the rate of a line a minute, and now, with the help of computerized machines, 15,000 lines can be

1. The operations are described below on pp. 26 and 53.

composed per minute.² Some newspapers have moved to computerized page make up systems.³

Computers have revolutionized information gathering, processing, and distribution. Information can be fed into them, coded and stored (*memory*) and taken out for use when needed (*retrieval*). Information can be processed, the computer applying arithmetical and logical processes, using the information stored, according to instructions with impressive speed and accuracy. The information sought is obtained in print, on video disc, cassette, tape, or visual screen. When the computer first appeared in 1944, it was bulky with only moderate speed. Technology advanced first by the invention of transistors, which replaced vacuum tubes and then of microchips capable of substituting hundreds of thousands of transistors.⁴ As the chip technology progressed, it became possible to greatly reduce the size of the computer, while increasing its memory capacity, its speed of computation, its variety of operations,

2. By linotype five news paper lines can be set per minute and by teletype six lines. In 1960, adding the type of computer then available, the speed was increased to fourteen lines. In 1964 there was a leap forward when phototype setting was devised for off-set printing, and the rate rose to 80. Two years later, with the aid of the RCA typesetting device the rate attained was 1800 lines. In the following year, a CBS-Mergenthaler Linotron phototype setting was installed in the U.S. Government Printing Office, and it possessed the capacity of 15,000 lines. See Wilbur Schramm, *Men, Messages and Ideas* (New York; Harper & Row Publishers, 1973) p. 168.

3. Metal makeup process was in vogue for over a century, and was replaced by pasteup for phototype setting. Pasteup is now being replaced by computer setting. See Leo Bogart, "How U.S. Newspaper Content is Changing," *Journal of Communication*, Spring 1985. See also *Many Voices One World* (Report of the International Commission for the Study of Communication problems, generally called MacBride Commission, UNESCO, London: Kogan Page Ltd., 1980, hereafter cited as MacBride Report), p. 87.

4. Information reduced to the form of binary code, a code which uses only two digits, 0 and 1, can be easily transmitted by, or recorded on, a semiconductor silicon chip in the form of electrical impulses or bits of information. At one time a silicon chip carried only eight bits and around 1970, sixteen bits. There are now in use chips that can store 256,000 bits. Development is envisaged of 1 million bit chips of one micron thickness (1/100th of the thickness of a human hair). Such a one megabit chip performs the role of a million transistors. Logic chips, which compute rather than store information, are also advancing rapidly. A new Intel microprocessor runs seventeen times faster than that used in IBM's first personal computer (PC). Whereas PC can address 1 million characters, the Intel can address 4,000 million characters. Chips made of gallium arsenide have three to six times the speed of silicon chips. Superlattices have higher speed than chips of either of these kinds, and semiconductors immersed in supercooled liquids such as of helium lose nearly all resistance to electrical current and function at much higher speeds. See Staley N. Wellborn and Manuel Schiffres, "Computers," reprinted from *U.S. News and World Report*, August 21, 1985, in *Span*, January 1986, p. 28. Superconductors that offer no resistance at room temperatures are in the process of development. Computers that use optical transmission of impulses, instead of electronic transmission, will increase computer speed manifold. They are expected to be available in the 1990's.

and reducing its price and cost of operation.⁵ Coded information can be transmitted to distant places swiftly and accurately, by telegraph or radio, directly or by a satellite. The coding and decoding is done almost instantaneously.⁶ Signals can be mixed together at the point of transmission and automatically separated at the point of receipt.

By the 1960's, point-to-point communication was possible by telegraph, telephone, teleprinter, and, in facsimile, by wire or radio wave. The carrying capacity of the wire increased strikingly with the advent of the co-axial cable in the 1950's, which was then capable of furnishing up to 40 channels.⁷ The radio frequency spectrum expanded from low, medium, and high frequencies (used for long, medium, and short distance communication and radio broadcasting) to very high (VHF), ultra high (UHF), super high (SHF), and extremely high frequencies (EHF), from 3 kilohertz (KHz) to 300 gigahertz (GHz).⁸ There is scope for further expansion. Communication by microwave started during World War II for communication from point to point within a visible range using UHF and SHF wavelengths. It acquired great distance (or range) with the advent of satellites.

In 1964, only seven years after the first satellite was put in orbit, the first commercial service satellite was launched by the Communication Satellite Corporation of the United States (COMSAT) for use by the

5. The size has been reduced since the 1940's by a factor of 10,000. Whereas the 1944 model performed 1 million operations per second, some present ones can perform 1 billion operations per second. See MacBride Report note 3 above, p. 64. The Cray-2 computer, developed by Cray Research, completes a computational cycle every 4.1 nanoseconds – the amount of time taken by light to travel 1.5 meters. Computerized gadgets can manage these speeds. They can also sense changes such as heat, gas leak, entry of intruders, human fatigue, and respond with signals. See Wellborn and Schiffres, cited above. The cost of a computer fell from \$1 million to \$300 and the cost of 1 million calculations fell in a decade from \$10 to 2 cents. See MacBride Report, note 3 above, p. 66. O.H. Ganley and G.D. Ganley, *To Inform or to Control* (New Delhi, Hindustan Publishing Corporation, 1982) p. 16 reports: In 1953, the computer (with a capacity of a little hand-held calculator now) cost \$3 million, weighed 1 ton, filled a large room, and used the energy of an electric locomotive. The price of a desk model computer is now under \$10,000. In 1952, one hundred thousand computer calculations cost \$1.25, whereas in 1982, they cost \$0.0025. Robert Jastrow, "Strategic Defense Initiative, the Rationale," *Span* March 1986 (reprinted from *The Washington Times*) pp. 10, 12, states that the American Telephone and Telegraph Corporation (AT&T) employs 50 million lines of programme code, with 14,000 nodes to operate the nation's telephone system.

6. See Ganley and Ganley, note 5 above, p. 14, for an explanation of the *analog* code used earlier – the code uses something analogous to the information to be coded, and the binary code which uses only 0 and 1. See also *MacBride Report*, cited above in note 3, p. 65.

7. *Ibid.* p. 74.

8. See Ganley and Ganley, note 5 above, pp. 98–99, furnishing information from U.S. State Department Special Report No. 57, August 1979.

members of the International Telecommunications Satellite Consortium (INTELSAT)⁹, followed by several others. These geosynchronous satellites facilitate transmission by microwave signals from an earth station via satellite to another earth station across an ocean. The several systems of INTELSAT form a global communication network.¹⁰ INTELSAT is not the only one in the field. There are also the INTERSPUTNIK system of the communist countries, and several national systems.¹¹

This communication network is far more elaborate than ocean cable systems. The carrying capacity of the satellite systems increased progressively and dramatically. INTELSAT-I provided for 240 voice circuits and one television circuit. INTELSAT-III, orbited in 1968, provided 1200 voice circuits and four televisions circuits. When such capacity was acquired, satellite communication gained the capacity to compete with cable transmission, in respect to rates. INTELSAT-VI was designed to have 40,000 voice circuits and two television circuits.¹² As a result of these technological advances, news agencies can now transmit news in larger quantities at much greater speed.¹³

Satellite transmission now encounters serious competition from another technological development – transmission by the optical cable. Optical cables carry electrical impulses converted into lightwaves. The experimental record shows that 4,000 million bits of information – equivalent to the contents of 30 volumes of the *Encyclopaedia Britannica* – can be transmitted per second over a distance of 117 kilometers.¹⁴ An optical fiber of the thickness of a human hair can provide a bandwidth

9. See L. Pollak and H. Weiss, "Communication Satellites: Countdown for INTELSAT-VI," *Science*, Feb. 10, 1984, p. 553. The INTELSAT was started with COMSAT and communication entities in 15 nations, and the membership has increased to 109. See also *MacBride Report*, note 3 above, p. 288. See also p. 271, below.

10. The INTELSAT has systems over the Atlantic, Indian and Pacific Oceans. See Pollak and Weiss, note 9 above, p. 556. See also *MacBride Report*, note 3 above, pp. 60, 288.

11. In 1980, more than 33 communication satellites were functioning, national, regional and international, and there were ground stations in 120 countries. *Ibid.* pp. 63–64; Robert R. Lovell and C.L. Cuccia, "A New Wave of Communication Satellites," *Aerospace America*, March 1984, p. 43.

12. Whereas marine cables have a few landing points, there can be access to a satellite from any earth station within the geographical range of the satellite. For a comparison of the marine cable and satellite, from communication and economy points of view, see Pollak and Weiss, note 9 above, pp. 556 and 558.

13. See Michael H. Anderson, "Emerging Patterns of Global News Cooperation," in Jim Richstad and Michael H. Anderson, Eds., *Crisis in International News: Policies and Prospects* (New York, Columbia University Press, 1981) pp. 318, 323: It is mentioned that whereas on a ticker about 60 words were transmitted per minute, with the devices available in 1981, it was possible to transmit 1200 words per minute.

14. See *MacBride Report*, note 3 above, p. 11; Robert W. Lucky, "A Burst of Light Worth a Hundred Million Words," *Span*, March 1986, 2 (reprinted from *Science*,

which is a million times greater than that provided by a radio channel. At present each fiber is used for a single channel, but by using different colors of light, the channels can be interleaved into one at the point of transmission and automatically separated at the point of receipt. The TAT-8 trans-Atlantic cable, scheduled to be operative in 1988, is designed to have 40 fibers.¹⁵

Television has progressed considerably. It can now be received from the air, by cable,¹⁶ from a satellite directly,¹⁷ or by a video recorded disc, cassette or tape.¹⁸ An event can be televised live around the world, and a version of it can be edited at the place of the event or at a central studio within a few hours.¹⁹ Cable transmission is useful to obtain a clearer television picture. Cable systems have developed enormously, and apart from their utility for television reception, they can furnish individuals, who can bear the cost, the latest information collected at data banks.²⁰ By cable transmission or by radio transmission via satellite, an entire newspaper or magazine, composed at one place, can be carried expeditiously to a distant place for printing and distribution.²¹

November 1985, p. 85); also Ganley and Ganley, note 5 above, pp. 19–20. New England and Washington, D.C. were connected in 1984 by a half-inch optic telephone cable.

15. See Lucky, note 14 above, p. 4; Robert A. Weeks, a lecture on electro-optic fibers, *The Hindu*, March 23, 1986, p. 16. The cable is expected to have the capacity to carry 565 megabits per second, and provide 40,000 telephone channels.

16. *MacBride Report*, note 3 above, p. 88, mentions that there are nearly 14,000 cable systems in the United States. See also Schramm, note 2 above, p. 169.

17. With a small disc antenna added to the receiver, the television broadcast can be directly received from the satellite. This device is used even by some individuals. Ganley and Ganley, note 5 above, p. 22, mentions that Canada and Japan were planning to use such broadcasting for domestic purposes. *Id.* p. 108, states such broadcasting is highly vulnerable to jamming. *Id.* p. 110 reports that the United States has no intention of broadcasting directly internationally. See also David Webster, "The Era of Direct Broadcasting by Satellites", *Foreign Affairs*, Summer 1984, reprinted in *American Review*, Summer 1984, p. 25.

18. *MacBride Report*, note 3 above, pp. 11, 171.

19. See Peter Marshall, "Visnews: TV News Flow and Satellites," in Richstad and Anderson, note 13 above, p. 279; Jonathan King, "Visnews and UPITN: News Film Supermarkets in the Sky," *id.* p. 283. See also Ganley and Ganley, note 5 above, pp. 65–66.

20. See Schramm, note 2 above, p. 170. The British Postal Administration operates the PRESTEL system, which supplies the latest information on many matters, including market information to subscribers. See *MacBride Report*, note 3 above, p. 71.

21. *Time* magazine transmits the entire edition by satellite to Hong Kong, and there it is printed, and this edition appears even before the New York edition. *The Wall Street Journal* is likewise published both from New York and Hong Kong. The Paris based *International Herald Tribune* is published and delivered on the same day as in the United States. See Ganley and Ganley, note 5 above, pp. 64–66. *The New York Times* brings out a Chicago edition every day. In India, *The Hindu* transmits by satellite in facsimile from Madras to Delhi to bring out its Delhi edition at the same time as at Madras.

SOCIAL SCIENCES AND THE PREDICTABILITY AND MEASURABILITY OF THE IMPACT OF MASS COMMUNICATION

The premise laid at the outset of this study is that the ideological instrument of coercion can be effective in changing the attitudes and behavior of mass audiences. It can also produce coercive effects on ruling elites who expect their power to decline as a result of attitudinal or behavioral changes on the part of audiences.²² Reference was made in the original work to the different views on the effectiveness of propaganda and psychological warfare – that the operations may or may not have an effect; that it is difficult to predict the long-term effects but not the short-term ones; and that it is not easy to estimate the effectiveness of strategic operations during a war, though tactical operations are effective.²³ It was stated that it was not possible to draw precisely the line that separates persuasion from coercion both with respect to mass audiences and ruling elites. Some indices were suggested which could be of help to decision-makers to estimate the probable outcome of particular uses of the instrument, whether persuasion or coercion, and the expected degree of coercion.²⁴ The question of great interest at any time is whether it is possible to define precisely the line that separates impermissible coercive uses from permissible ones.

History furnishes ample evidence that ruling elites have always feared communication of facts and ideas in their capacity to destabilize the established order. Heretics were burned at the stake, and revolutionary books of high scientific merit were banned from circulation. In the 1930's, when national and transnational radio broadcasting became common, there was great fear that radio broadcasting could be used to subvert national governments and could be a serious source of danger to international peace. There emerged a theory, now referred to as the *hypodermic theory* or the *bullet theory*, which then gained considerable support.²⁵ It was thought that a skillful communicator could *inject* into the minds of audiences safe ideas and control their behavior. The bullet theory viewed the audience as an open target bombarded by words (the propaganda) which would control their behaviour as desired. Around 1950, however, there appeared expressions of doubt about the effectiveness of propaganda and the bullet theory was countered by what may be referred to as the *no-effect theory*.²⁶

22. See below pp. 27–34.

23. Ibid. pp. 60–61.

24. Ibid. pp. 27–34 and pp. 60–68.

25. See Schramm, note 2 above, pp. 52 and 243.

26. The “no-effect” theory is referred to below p. 60. See also Schramm, note 2 above, p. 243.

As a result of systematic studies carried out from 1940 onwards by sociologists, psychologists, political scientists, and mass communication specialists, a better understanding of the effect of mass communication has evolved.²⁷ But there is much still to do before we are able to state scientifically maintainable propositions. What we are able to say about the effects of communication, says Wilbur Schramm, is "below the reliability of exact science and above the reliability of science fiction".²⁸ He states that the complexity of the matter is realized, and there is an effort to identify as many relevant variables and forces at play as possible. We are on the way toward a usable theory of communication effect, although we are still like blind men trying to describe the elephant, feeling each part separately but never seeing the whole. As Walter Weiss stated in 1969: "Hovland wrote in 1954 that no satisfactory or theoretically derived classification scheme was available for categorizing media effects. Not only was it true then, but unfortunately it still is. . ."²⁹

Scientific enquiries to understand the effect of communication on human attitudes and behavior have proceeded along two principal lines. First, psychologists have tried to explain how the human organism "learns" to respond to external stimuli, verbal stimuli included. Second, scholars of different disciplines interested in the study of the effect of mass communication have studied what features of communication affect its persuasive efficacy. Both groups have used the techniques of laboratory experimentation as well as field study. Inquiry into the learning process has proceeded in three different directions: the Freudian, the behaviorist and the cognitive. If the standard theoretical model is S-O-R, the stimulus acting on the organism produces the response, Freudians explained what transpires in the organism in terms of inner drives, inhibitions, repressions, aggressions, symbolic gratifications, etc. For behaviorists, the Freudian approach was not convincing since it did not admit of laboratory experimentation and measurement.³⁰

The behaviorist approach, initiated by I.P. Pavlov in Russia and E.L. Thorndike in the United States, conceived of learning as the result of conditioning the organism to respond in a particular manner to ex-

27. For an account of the vast literature on these studies, see Schramm, note 2 above, chaps. 11 to 14; Walter Weiss, "Effects of Mass Media of Communication" in G. Lindzey and E. Aronson, Eds., 5 *The Handbook of Social Psychology*, (2nd ed., Menlo Park, Calif. Addison-Wesley Pub. Co., 1969).

28. Schramm, note 2 above, p. 198.

29. Weiss, note 27 above, p. 80.

30. See e.g., B.F. Skinner, "Why I am not a Cognitive Psychologist," in his *Reflections on Behaviorism and Society* (Englewood Cliffs, N.Y., Prentice-Hall Inc., 1978), p. 97.

ternal stimuli.³¹ The behaviorists branched off in the United States in at least three principal directions. The first group, led by Clarke Hull, Neil Miller, John Dollard and later, with certain changes, by Hovland and his associates, concentrated on the cue that moves the organism in the direction of satisfaction of its primary inner drives; the second, Guthrie and his followers, focussed on the stimuli that accompany the principal stimuli which lead to satisfaction of the inner drives; and the third, by B.F. Skinner and his followers, attached importance to gratification which follows the response of the organism and reinforces the response.³²

The cognitive theory differs sharply from Freudian and behaviorist approaches, assigning primary importance to the cognitive map of the individual; that is, the images he carries of the external world, the values he assigns and prefers in the social context, and the social role he perceives himself to possess. The organism strains, when it comes under the impact of an external stimulus, to maintain its internal consistency and cognitive balance.³³

The three approaches yield important information. They indicate a large number of possible stimulus-response relationships, and independent and dependent variables.³⁴ However, they have not advanced enough to render the relationship between mass communication and response one to be expressed precisely, and, even if it is within some statistical frame to be useful for predictive purposes, whether it will persuade, coerce or have no effect at all.

Studies on persuasive communication have yielded much useful information, but not the means to predict accurately behavioral changes or changes in attitudes. Reference is made below to the factor of *obstinate* audiences who defy all attempts at changing their attitudes;³⁵ of the *sleep*er effect or delayed response,³⁶ and of changes in attitude that occur internally and may never be manifest externally.³⁷ It is even doubted whether there is anything like a stable attitude that influences beha-

31. E.L. Thorndike, *The Fundamentals of Learning* (New York, Teachers College Press, 1932); also see below p. 17.

32. For more details see S.M. Berger and W. Lambert, "Stimulus-Response Theory in Contemporary Social Psychology," in 1 *Handbook of Social Psychology*, note 27 above, p. 81; Schramm, note 2 above, p. 202.

33. On the consistency theory, see W.J. McGuire, "The Nature of Attitudes and Attitude Change," in 3 *Handbook of Social Psychology*, note 27 above, pp. 136, 268-269.

34. Berger and Lambert, note 32 above, p. 117, write that 23 classes of independent and 14 classes of dependent variables were used in the studies.

35. See below pp. 61-62; see also Schramm, note 2 above, p. 245, where reference is made to Raymond Bauer's contribution on "obstinate audience." See, "The Obstinate Audience: the Influence Process from the point of Social Communication," 20 *Public Opinion Quarterly* 238 (1956).

36. See below p. 63; also Schramm, note 2 above, p. 221.

37. See below p. 78.

vior,³⁸ or a stable relationship between verbal and non-verbal behavior.³⁹ There is no assurance that the probability of a response in behavior, estimated on the basis of laboratory experimentation, will be found true in field studies. The reason is that people outside respond under varied social pressures, in reference to specific or particular issues, and not under the influence of a general attitudinal disposition.⁴⁰

While one may desire precise criteria for determining the character and magnitude of the outcomes resulting from the use of the ideological instrument of coercion, it is not possible at present to state such criteria. It may become possible as the social sciences advance and all the variables are identified and their precise relationship established. Indeed, in regard to the issue of variables, thanks to high capacity computers, a multiplicity of variables may not now pose a serious problem.

However, claims for regulation, once harm or relative deprivation is experienced or expected, do not wait, even though the incidence and magnitude of the harm cannot be stated with precision. Nor can decision-making on the claims be completely avoided. Even if this matter is left to be dealt with by governments on a bilateral basis by agreements and by mutual tolerances, problems arise when governments resort to actions stated to be retaliatory to the adversary's use of the ideological instrument of coercion. There will be questions regarding proportionality and legitimacy of the action. In this study, then, attention is drawn to the major variables identified by scholars in allied social sciences, so that decision-making in response to claims may be done by estimating deprivations by reference to particular variables. Such decision-making, it is believed, will be more rational than attempting to apply ill-defined and vague verbal formulas such as *war propaganda*, *subversive propaganda*, etc.

RECENT CHANGE IN THE WORLD FORMAL AND EFFECTIVE POWER STRUCTURE

Ever since the close of World War II, the world effective power structure has remained remarkably stable. The two super-powers, and their alliance systems, have stood more or less in the same position of near parity of effective power. There have been some shifts in the position

38. See A.W. Wicker, "Attitudes versus Action, the Relationship of Verbal and Overt Behavioral Responses to Attitude Objects," 25 *Journal of Social Issues* 4, 75 (1969). He states, "The present review provides little evidence of the postulated existence of stable underlying attitudes within the individual which influence both his verbal expressions and his actions." Cited in Schramm, note 2 above, p. 217.

39. Schramm, note 2 above, pp. 218-220. He cites the views of Hovland, Fishbein and Rokeach in this regard.

40. Ibid. p. 220.

taken by lesser powers, as for example, China, Egypt, Iran, Somalia, Albania, Yugoslavia, Nicaragua, Afghanistan, and Grenada, but the changes have not significantly affected the bipolarized world effective power structure.⁴¹

On the other hand, the formal power structure has changed quite remarkably. The collective security system built in the United Nations, which made the Security Council the organ primarily responsible for peace and security, was premised on the continued collaboration of World War II allies. This collaboration was not forthcoming and the system turned out to be still-born. The United States, once enjoying the capability to command a two-thirds majority in the General Assembly, toyed for awhile with the idea of making the General Assembly an active organ of collective security, and the Uniting for Peace Resolution was a major outcome of this policy.⁴² However, the policy had to be abandoned before long. The "package" admission policy in 1955 initiated rapid expansion of the United Nations membership. New applicants appeared soon on the scene as territories were released from Trusteeship and colonial peoples secured independence. The membership has grown steadily nearly three-fold. The bulk of the new nations have preferred to be non-aligned with either of the two power blocs. Their votes are an uncertain factor now for both blocs. The outcome has been that the United Nations is reduced mostly to the position of a diplomatic facility, providing scope for bilateral contacts, supplementary to contacts through diplomatic missions, for informal multilateral consultation, for parliamentary diplomacy,⁴³ and for mediation and conciliation by its organs.

If an outbreak of large-scale violence between two states is considered a culmination of a process of mutual application of coercion, by diplomatic, ideological, economic, and military instruments, in an escalating fashion,⁴⁴ and it is considered that collective security would be better facilitated by an international organ intervening at a stage earlier than the actual outbreak of violence, a capability to so intervene exists now in the United Nations only theoretically. Actually it may not be able to stop even ongoing violence as the Gulf War has demonstrated for years.

41. On the relatively stable balanced power structure in the post World War II decades, see John L. Gaddis, "The Long Peace, Elements of Stability in the Postwar International System," 10 *International Security* 99 (Spring, 1986).

42. For reference to this Resolution, see below p. 197.

43. The expression "parliamentary diplomacy" was first coined by Dean Rusk. For his definition, see Max Sørensen, Ed., *Manual of Public International Law* (New York, St. Martin's Press, 1968), p. 677.

44. Such a concept was first put forward by Professor Myres S. McDougal, "Peace and War; Factual Continuum with Multiple Legal Consequences," 49 *A.J.I.L.* 63 (1955).

The super-powers and their respective alliance partners rely on arrangements in the alliance systems and on nuclear deterrence for security. To them the United Nations has no value as an instrument to protect their world-wide interests. To some, such as the United States and United Kingdom, an organization like UNESCO may appear to be a hindrance to the pursuit of their national objectives.⁴⁵

The Third World nations face problems arising from their political institutions and economies. The economic problems are aggravated by the fact that they have inherited economies bound up with the economies of their former imperial rulers. To escape this and to develop technically is not an easy task. The so-called "economic aid" and technological assistance from the developed North have often been, in practice, a source of disappointment, frustration, indebtedness, adverse balance of payments and, ultimately, the question is raised as to who has benefited more, the donor or the recipient. The developing nations consequently demand a radical change in the world economic system and use the fora of international organizations to engage in a collective bargaining for change. A New International Economic Order is a prominent demand of the Third World. A demand allied to it is the demand for a New International Information and Communication Order. To the Third World, the United Nations system appears as a useful forum for collective bargaining with the industrial North.

THE PROCESS OF USE OF THE IDEOLOGICAL INSTRUMENT AND NEW CLAIMS

THE PROCESS OF USE OF THE INSTRUMENT

The problem situations that arise for legal regulation, as the ideological instrument of coercion is used, are set out below in detail, describing the processes of use of the instrument, of claim and decision.⁴⁶ Here we focus on problems that have recently emerged, adopting the same method of analysis.

Participants

It seems that international officials can no longer simply be included in the category of non-officials as was done in the original study.⁴⁷ The possibility of an international organization having its own satellite in orbit is envisaged in the United Nations General Assembly Resolution on Principles Governing the Use by States of Artificial Earth Sat-

45. See C. Krauthammer, "The Poverty of Realism," *The New Republic* 14 (February 17, 1986).

46. Chap. 3.

47. Page 36.

ellites for International Direct Television Broadcasting.⁴⁸ Several international organizations have programs of publication by mass media. Some of this publicity may be directed against a particular state, as for example the United Nations protest with respect to Apartheid or its focus on Israel with regard to the Palestinian question. Such activity may give rise to the issue of the responsibility of the organization, of the state from whose territory the dissemination is made and of the members of the organization.

Situation: Crisis

Crisis is mentioned as one of the conditions that affect the impact of communication on the audience. The principal characteristic of crisis is that expectations are so high that severe deprivations of values will occur to some or all of the actors involved. Situations in which the expectation of violence or of an economic catastrophe is high are typically crisis situations. But there can be others, involving a threat to other values such as power and rectitude. In critical situations, the response of the audience may be panicked flight,⁴⁹ or resignation. On the other hand, crisis can awaken protective mechanisms of people and they can prepare to fight.⁵⁰

Relative Capabilities: Developed and Developing Nations

The developing nations are underdeveloped in respect to mass communication due to social, economic, and technological underdevelopment.⁵¹ The disparity between the developed and developing nations with respect to the press and other mass media has occasioned a bitter controversy in UNESCO in the 1970's and early 1980's, imbroglioing that organization into a crisis from which it is still to emerge.

The press in the West has had a very interesting history. Soon after its advent, it joined the fight against absolute monarchy and aristocracy and emerged victorious. Freedom of the press became an inseparable part of the freedom of expression. The Fourth Estate emerged as a most prominent communication link between the government and the people, a check and a vigilance on government.⁵² News gathering developed as an allied enterprise of the press, expanding with the telecommunication industry. It moved close to financial and business interests as it collected information of importance to them, especially

48. Resolution 37/92, 10 December 1982, hereafter referred to as the DBS Resolution of the General Assembly. The text is reproduced in 77 A.J.I.L. 773 (1983).

49. Below pp. 24 and 52n.

50. Oran R. Young, *The Politics of Force: Bargaining During International Crises* (Princeton, N.J., Princeton University Press, 1968), pp. 15, 96.

51. The problem is set out in detail at p. 264 below.

52. See Schramm, note 2 above, p. 159.

stock exchange information.⁵³ Another factor that brought industry and mass communication close to each other was advertising. The former sought publicity about themselves and their products and the latter received a good part of its revenues from advertising. Finally, the press and news gathering provided opportunity for investment and business.

Business and industry moved to foreign states. Organizational skills and the device of incorporation are employed to establish multinational corporations, which command vast economic resources and technical skills. In the course of time, corporations diversified their operations and a corporation that is confined to a single operation is hard to find. There are, it is observed, "corporations that simultaneously produce steel, movies, and rent automobiles, or are engaged in mining and radio broadcasting."⁵⁴ Television and radio broadcasting and magazine publication spread to foreign lands along with transnational corporate business.⁵⁵

The close association between big business and the mass communication industry is now a matter of common knowledge. Reuters, for example, is owned by as much as eighty per cent by national and provincial press, which in its turn is in the hands of oil companies and others unconnected with media activity.⁵⁶ The Associated Press of the United States has a partnership combine for financial news with Dow Jones and the *Wall Street Journal*.⁵⁷ It is no wonder then that the demand for a New International Information and Communication Order voiced in UNESCO drew the response: "Our economic interests are under attack by competitors in nations that are concerned about our commercial dominance and leadership in technology The effects of these restrictions on our balance of payments could be severe as information is now our second largest source of foreign revenue."⁵⁸

The relationship between a multinational corporation and the government of its parent state is very subtle. The corporation looks to the parent state for protection and furtherance of its interests but dislikes

53. J. Tunstall, "Worldwide News Agencies - Private Whole-salers of Public Information," in Richstad and Anderson, note 13 above, pp. 255, 268.

54. Celso Furtado, *Obstacles to Development* (Garden City, New York, Anchor Books, Doubleday & Co. Inc., 1970), p. 31.

55. See R.J. Barnett and R.E. Muller, *Global Reach: The Power of the Multinational Corporations* (New York, Simon and Schuster, 1974) pp. 143-146.

56. Ibid pp. 264-265.

57. Ibid.

58. Leonard J. Therberge, "U.N.E.S.C.O.'s 'New World Information Order,' Colliding with First Amendment Values," 67 *American Bar Association Journal* 714, 718 (1981); see also the acerbic article by the President of the American Association of Advertising Agencies Inc., Leonard S. Mathews, "Designing a Muzzle for Media," *Business Week*, June 15, 1981.

any restrictions imposed on it. The government of the parent state regards the enterprise as a national asset and as deserving all protection and encouragement, but resents when the management of the enterprise runs counter to national policies. It is observed, "for the global corporation, the U.S. Government is both a nuisance and a necessity. For the government, the corporation is a source of national power and a frustrater of national policy."⁵⁹

It is against this background that one must see the Western transnational news agencies. Even by 1953, five news agencies belonging to four major powers played a dominant part in organizing the flow of news across national boundaries around the world.⁶⁰ These five are now joined by two television news agencies that operate on a global scale, the Visnews and United Press International Television News (UPITN).⁶¹ The former is owned by the British Broadcasting Corporation (BBC), Reuters and the Canadian and Australian Broadcasting Corporations. The National Broadcasting Corporation of the United States is an affiliate. The UPITN is a cross between United Press International of the United States and the Independent Television News of the United Kingdom, a private British Company. The operations of Visnews are centered in London and UPITN in London and New York. These seven global Western news agencies are perceived by developing nations in a manner very much like *Reuters*, British cables, and the French *Havas* news agency were seen in the 1920's and 1930's by the United States press industry. Kent Cooper of the Associated Press of the United States wrote: "The cable brought Australia, South Africa, India, China, Canada and all the British world instantaneously to London on the Thames . . . Britain, far ahead of any other nation, concentrated on the cable business. First it tied its Empire together. Then it stretched out and tied other nations to it. And in harmony with Victorian practices, the news that went through this vast network of cables gave luster to the British cause! . . . In precluding the Associated Press from disseminating news abroad, Reuters and Havas served three purposes: (1) they kept out Associated Press competition; (2) they were free to present American news disparagingly to the United States if they presented it at all; (3) they could present news of their own countries most favourably and without being contradicted. Their own countries were always glorified."⁶²

59. Barnett and Muller, note 55 above, p. 75.

60. See below p. 265.

61. Tunstall, note 53 above, gives a detailed description of the two television news agencies.

62. Kent Cooper, *Barriers Down* (New York, Farrar and Rinehart, 1942) p. 43; see also Herbert Schiller, "Genesis of Free Flow of Information Principles," in Richstad and Anderson, note 13 above, p. 161, 164; Ganley and Ganley, note 5 above, p. 79.

Mass communication industry, based as it is upon technology, journalistic and allied technical skills, and possession of resources for investment, forms an important index of level of development of a nation. Judged by this index, nations differ over a wide range. News agencies like the Associated Press (AP), United Press International (UPI), Reuters and Agence Francaise de Presse (AFP) have no doubt worldwide operations. Next in size comes *Tass* of the Soviet Union, *Hsinhua* of the People's Republic of China, *Deutsche Press Agentur* of West Germany, *Agenzia Nazionale Stampa Associata* of Italy and *Kyodo* of Japan, and these compete with the big four in some respects. Some Third World news agencies of relatively advanced states maintain correspondents in important capital cities. The Telegrafiska Agencija Nove Jugoslavije (TANJUG) of Yugoslavia is the largest among these and the Arab Revolution News Agency (ARNA) of Lybia and Middle East News Agency (MENA) of Egypt are of smaller size.⁶³ By the 1970's, 120 nations had established their own news agencies.⁶⁴ There are regional news agencies formed with the assistance of UNESCO and the United Nations Development Programme, such as the Caribbean News Agency and the Pan African News Agency.⁶⁵ The non-aligned nations formed the Non-aligned Nations News Pool in 1975.⁶⁶ The Inter Press Service is formed with its headquarters in Rome to promote cooperation among Third World nations and some news agencies of the developed world.⁶⁷ Several newspapers, including those of the Third World, maintain their own correspondents abroad, and big ones such as *The New York Times*, *The Washington Post* and *The Los Angeles Times* gather news for their own use and supply information and columns to smaller papers.⁶⁸

A state having transnational news gathering and dissemination capa-

63. Mort Rosenblum (once editor of the International Herald Tribune), "Reporting from the Third World," in Richstad and Anderson, note 13 above, p. 22, gives a detailed description of transnational and large national news agencies. *Tass* is treated as national rather than transnational. In terms of investment, the AP's annual budget is about 100 million dollars. It is a non-profit cooperative. The UPI is a business organization but its profits are not excessive. AFP receives large government subsidies, which are used in part to maintain bureaus that are apparently uneconomical and to provide service to Third World newspapers. It supplies a total of 12,000 newspapers.

64. Michael Anderson, "Emerging Patterns of Global News Cooperation," in Richstad and Anderson, note 13 above, pp. 317, 333.

65. MacBride Report, note 3 above, p. 85.

66. Ibid.; also see Mankeker, "The Non-aligned News Pool," in Richstad and Anderson, note 13 above, p. 369; and Leonard Sussman, "Wanted: A Third World Satellite News Network," *The Washington Quarterly*, Winter 1982, pp. 163, 167.

67. For a detailed description of the IPS, see Phil Harris, "News Dependence and Structural Change," in Richstad and Anderson, note 13 above, p. 356.

68. Rosenblum, note 63 above, p. 226.

bility has an advantage over those that do not. The latter must get information of the outside world to its internal audience via a transnational, regional or large or small foreign news agency. Its government can however perform "gatekeeping." In fact, some governments (themselves or through official news agencies) purchase the news from outside and distribute it internally. They do not permit the flow of news inside through non-governmental channels.⁶⁹ If the government of a state without a transnational agency wants news about that state to be published abroad, it must influence some transnational, regional or foreign national news agency to pick up the news and publish it, unless the news agency itself considers the matter "newsworthy." It will be necessary for the news to penetrate the "gate" at several places. On the other hand, if a state has a transnational facility, it is easy to transmit to other countries, though publication is thereby not necessarily ensured.

Regarding radio broadcasting, no state now stands at a particular disadvantage, and this type of broadcasting is the least transnationalized in terms of ownership and program.⁷⁰ Television broadcasting by satellite however presents a problem. Communications satellites are mostly geostationary. They are placed in an orbit 35,786 k.m. above the earth, to revolve around the polar axis of the earth in the plane of the equator.⁷¹ In order to place a satellite in a geostationary orbit, two things are required: a slot in space in which to place it and radio frequencies to place and keep it in orbit and to transmit signals to it and receive signals back. Each satellite has to be at least two degrees angular distance from another.⁷² Hence there are constraints regarding space.⁷³ Furthermore, the radio frequencies now used are the C band, 6–4 GHz, and Ku band, 14–11/12 GHz. The Ka band, 30–20 GHz, is expected to be developed. As such, the frequencies available are

69. Elie Abel, "Communication for an Interdependent World," in Richstad and Anderson, note 13 above, pp. 97, 101, states that direct sales of news by news agencies are in 22 countries for the AP, in 18 for UPI, and in 26 for Reuters. The rest of their sales are to governments or government agencies, which distribute to local consumers.

70. MacBride Report, note 3 above, pp. 60–61. This is according to a survey in 1973. Ibid. 128 mentions that only 27 countries have no television because of low GNP or by deliberate choice. Every state has its own radio broadcasting facility.

71. On the operation of geostationary satellites, see *Committee on Peaceful Uses of Outer Space, Physical and Technical Attributes of Geostationary Orbit, Study prepared by Secretariat*, U.N. Doc. A/AC.105/203, 29 August 1977, Addendum 1, 11 December 1978, Addendum 4, 18 May 1983. Also, J.N. Pelton, "Goldrush in the Clarke Orbit," *Society*, Jan./Feb. 1984, p. 26; Pollak and Weiss, note 9 above; R.R. Lovell and C.L. Cuccia, "New Wave in Communication Satellites," note 11 above.

72. At present a movement of one degree on either side is permitted to keep the satellite in position, and the equivalent of two degrees at that altitude is 1,500 km.

73. It is estimated that 120 to 180 satellites may be placed in the geostationary orbit. See Pelton, note 71 above.

limited.⁷⁴ The International Telecommunication Convention of 1973 describes the radio frequencies and the geostationary satellite orbit as "limited natural resources."⁷⁵

The geostationary orbit is now used by some states which have technological and/or investment capability and multi-administrative systems (INTELSAT,⁷⁶ Intersputnik,⁷⁷ and EUTELSAT⁷⁸). Other states aspire to have their own satellite systems. They fear that there might be no space left by the time they acquire the requisite capabilities. The radio frequencies are now allocated on the principle of "first come, first served." Under the system administered by the International Frequency Registration Board (IFRB) of the International Telecommunications Union, a state may initiate the use of a frequency, in the band allocated for the service, by registering it with the IFRB, and any later user is required to use the frequency without causing disturbance to the pre-existing uses.⁷⁹ The developing states fear that in the future when they have enhanced their capabilities, there may be no radio frequencies available to be used by them.

Strategies: "The Two-Step Theory"

It is necessary to correct what is currently described as the "two-step" theory mentioned below.⁸⁰ According to the theory, the impact of mass media on the individual is indirect rather than direct. The media first influences the leaders of a community and they in turn influence the members of their respective groups. However, this theory is no longer held as true. The more acceptable position is that an individual may be influenced either by the mass media directly or by the pundits or both.⁸¹

74. Lovell and Cuccia, note 11 above; Martin A. Rothblatt, "Satellite Communication and Spectrum Allocation," 76 A.J.I.L. 56 (1982).

75. Art. 33 runs: "In using frequency bands for space radio services Members shall bear in mind that radio frequencies and geostationary satellite orbit are limited natural resources, that they must be used efficiently and economically so that countries or groups of countries may have equitable access to both . . ."

76. The organization COMSAT is referred to below at p. 271. The series of satellites of COMSAT are mentioned in the MacBride Report, note 3 above, p. 288; also Pollak and Weiss, note 9 above. Gregory C. Staple, "The New World Satellite Order: A Report from Geneva," 80 A.J.I.L. 699, 701 (1986), describes it as a 110 member cooperative, operating 16 satellites through over 850 ground stations in 160 countries.

77. For information on Intersputnik, see MacBride Report, note 3 above, p. 289. The Soviet Union, Eastern Europe, including Rumania, Cuba and Mongolia are members of this organization.

78. For information on EUTELSAT, see Lovell and Cuccia, note 11 above, p. 48. It has 20 members. Its first system ECS-1 was placed in orbit in 1983. The ARABSAT was established for over 20 Arab countries.

79. See Staple, note 76 above, p. 701.

80. Pp. 26-27 and 54.

81. See Schramm, note 2 above, pp. 120-121; also Weiss, note 27 above, p. 153.

Outcome

As a result of the structure of mass communication prevailing in the world at present, news flows from the developed world to the developing world. Almost all the news gathered by the five transnational news agencies and the two transnational television news agencies is brought to the central offices of these agencies where it is processed and retransmitted. The news necessarily undergoes selection and interpretation during processing and before transmission to the world at large, with slightly different emphasis according to the audience. Furthermore, the processed news is published after local "gatekeeping".⁸² The current pattern of flow of news is perceived by some as likely to produce the following outcomes. First, the flow is unbalanced and there is more news about the developed world than the developing world.⁸³ Secondly, the flow may not affect the outcome of specific events or issues, but those who control the flow can teach the audience a particular type of "language," and "condition" them to respond in a certain manner and to accept certain values.⁸⁴ Moreover, the value preferences directly or indirectly disseminated are likely to cause erosion of the values in the communities at the receiving end. The pattern of flow tends to establish "cultural domination" or "cultural imperialism."⁸⁵ In addition, primacy is given to national and commercial interests and only selective attention to the events in the state from which news is gathered. Events are not reported if they do not appear important from the gatherer's national viewpoint. Reports are made about coups, assassinations, strikes and crises in developing states and very little reporting is done about the more obviously positive efforts at development in those states. The reports are generally biased.⁸⁶ Final-

82. Rosenblum, note 63 above, p. 226 states thousands of newspapers and broadcasters who receive supply from the global news agencies include those ranging from radical left to extreme right. Wilbur Schramm's study "What the Chinese People Are Telling Their People about the Third World," in Richstad and Anderson, note 13 above, p. 299, describes the process of "editing" for local purposes in China.

83. See on the imbalance, Mustapha Masmoudi, "The New World Information Order," in Richstad and Anderson, note 13 above, p. 77. As Tunisia's representative in UNESCO, he was a leading exponent of the case for a New International Information Order. He states that only 20% to 30% of news gathered by transnational news agencies is about the developing world even though it comprises three-fourths of mankind. MacBride Report, note 3 above, p. 139 *et seq.* discusses the problem of imbalance.

84. See Jonathan King, "Visnews and UPITN: New Film Supermarkets in the Sky," in Richstad and Anderson, note 13 above, pp. 370, 423.

85. *Ibid.*; also MacBride Report, note 3 above, p. 159, discusses this problem, but does not support the plea for restriction of the flow of information for this reason.

86. See for discussion of these views, Rosemary Righter, "World Communication Issues," in Richstad and Anderson, note 13 above, p. 64; Masmoudi, note 83 above.

ly, while human communication is inherently mutual, and from one to another and back, mass communication tends to be vertical, a one way communication. At the national level, too, this is the case,⁸⁷ but at the global level it is even more so. The world information flow now follows essentially the "oligarchic" rather than "participatory" model.⁸⁸

The rise in the enlightenment level all the world over is not commensurate with the great advances of communication technology. There are gaps and distortions in the information which the public around the world receives.⁸⁹ Many reasons can be stated as contributing to this end, but the following may be mentioned as the more significant. First, there is the low level of literacy and education in the developing world, and in that part of the world the printed word is not significant as a means of communication. Secondly, even though transnational news agencies are big enterprises, their operations are not big enough to cover the field fully. For instance, Reuters devotes only about 3,000 words daily to reports about India.⁹⁰ Visnews prepares only forty to fifty news stories per day, each only of ninety seconds duration.⁹¹ The Associated Press and United Press International have each only a single full-time correspondent in Nairobi to report about black Africa north of Zimbabwe, besides roving correspondents and stringers who provide occasional write-ups.⁹² Fourth, selection is inherent in the process of communication. A reporter does not report every detail of what he witnesses, and all that he reports does not go into newspapers or radio newscasts.⁹³ In an age of knowledge explosion, no one can be other than selective in picking up his knowledge.

If one perceives the world community as an interdependent and plu-

Elie Abel, "Communication for an Interdependent World," note 69 above, p. 97; Rosenblum, note 63 above, p. 223, refers to the charge of "crisis journalism" and of neglect of "development journalism," and discusses the issues involved. See also MacBride Report, note 3 above, p. 156 *et seq.*

87. MacBride Report, note 3 above, p. 149.

88. MacBride Report deals with this problem at length. See also Phil Harris, note 67 above, p. 360. Mankekar, note 66 above, p. 423, refers to the distinction made by Harold Lasswell between the "participatory" and "oligarchic" models. The latter is stated as power-oriented, and is designed to control, to manipulate, to indoctrinate or to distract.

89. MacBride Report, note 3 above, p. 156.

90. Gerald Long, a high official of Reuters, cited in Richstad and Anderson, note 13 above, p. 237.

91. Peter Marshall, "Visnews: TV News Flow and Satellites," in Richstad and Anderson, note 13 above, pp. 279, 285, 286.

92. Rosenblum, note 63 above, p. 227.

93. Wilbur Schramm, "International News Wires and Third World News in Asia," in Richstad and Anderson, note 13 above, pp. 197, 199, observes that the quantum of news decreases as it moves along the pipeline. In his work cited in noted 2 above, p. 15, he states that only 2% to 3% of the news collected reaches the reader.

ralistic system, requiring a more thorough achievement of the common interest, the prevailing pattern of uneven distribution of communication resources, technology and skill appears to be quite at odds with it. As a scholar in this field observes:

The present concentration in particular nations and institutions of the resources needed to communicate effectively across national boundaries and within them, is clearly undesirable. It results in disproportionate voicing of certain perspectives and substantial ignoring of others. It is clear that this situation does not suit the needs of an increasingly interdependent, pluralistic world system of states.⁹⁴

The outcomes mentioned above relate to the routine operation of mass communication in the contemporary world community. In situations involving intense use of the ideological instrument of coercion, the distortions and imbalances in communication are bound to multiply several times over. However, though expectations of the outcome of the use of the ideological instrument are no doubt related to the intensity of use of the instrument, as, for example, the likelihood that highly emotionalized statements will generate greater thrust towards action than will low key ones, the response of the audience is dependent upon not only the stimulus of the communication and its intensity but upon a great variety of predispositional and environmental factors affecting the audience.

THE PROCESS OF CLAIM

The following sets of claims and counterclaims require mention in light of recent developments.⁹⁵

Participation

The claim that the responsibility for impermissible activity in the use of the ideological instrument of coercion by an international official lies (or does not lie) with:

- (a) the international organization in which the official is employed.
- (b) the state from the territory of which the activity proceeds.
- (c) a state which is a member of the organization.

94. Abel, note 69 above, p. 104. Julius Stone, *Visions of World Order: Between State Power and Human Justice* (Baltimore and London, Johns Hopkins University Press, 1984), p. 3 *et seq.* discusses the physical, cultural and psychological factors in the world community which militate against accurate and faithful human communication across national boundaries.

95. Below, pp. 69–71, a detailed statement of actual or potential claims may be found, and what is stated here is supplemental to that statement. Claims concerning freedom of information, “free flow of news,” “free and balanced flow of news,” and New International Information and Communication Order, are not set out here, as the principal focus in this book is on the coercive use of the ideological instrument, and the focus on freedom of information is secondary.

Relative Capabilities

The claim that all states should have (or need not have) equal access to the geostationary orbit.

Strategies

The claim that direct broadcasting by satellite to a foreign state is (or is not) impermissible without that state's consent.

Outcome

The claim that disseminations are (or are not) impermissible if they are likely to undermine local society in its way of life, culture, traditions and language.

Effects

The claim that disseminations are (or are not) impermissible if they are likely to undermine human rights.

CLARIFICATION OF PREFERRED POLICIES

This is a policy-oriented study concerned not only with received authority,⁹⁶ but rather with clarifying the policy issues that might arise and the alternatives available to decision-makers in making policy choices. Relevant propositions of law that have come to us from the past are taken as articulations of the policy choices made in the past in particular contexts. A contextual analysis of past situations is presented to throw light on the policy choices made in the past. Future probable situations are, we suggest, likewise to be analysed to make appropriate policy choices, while invoking or applying past prescriptions.

The approaches in the past of scholars who studied the problems of propaganda were marked by two features: First, the scholars were concerned with provocations caused by propaganda to breaches of peace, and they invited attention to past legal prescriptions which implied restraint on propaganda in the interest of peace, and suggested new ones. Secondly, they perceived the implications of such restraints for the freedom of expression. So they proceeded to suggest exceptions to the proposed restraints. The approaches were not very productive as they

96. See below pp. 7–8. D'Amato, 62 *Am. Pol. Sci. Rev.* 1392 (1968), pointed out that I did not state clearly what is permitted and what is prohibited. The policy-oriented approach is partly based on the thesis that such statements are practically useless, as future decisions are as much likely to falsify such statements as to verify them. Such statements are normatively ambiguous, not making clear whether they represent what the author wishes what the future decisions should be, or predicting what the decisions will be. See Harold D. Lasswell and Myres S. McDougal, "Legal Education and Public Policy: Professional Training in the Public Interest," 52 *Yale L.J.* 203, 267 (1943).

supplied very little guidance in regard to the variety of situations that lay between the two extremes, those that definitely called for restraint and those that clearly demanded that protection be given to freedom of expression. Further, the approaches left the protagonists of regulation of propaganda and those of freedom of expression as unreconciled as ever, especially on the question whether priority should be given to "peace" or freedom of expression.

Departing from the general approach for curbing certain types of propaganda, Professor Richard Falk proposed a preferred policy for regulating the ideological instrument that was based upon a realistic assessment of the world process of effective power and of the role and impact that transnational propaganda might achieve in the contemporary world community.⁹⁷ He considered that a comprehensive international control of propaganda was neither feasible nor desirable. He was for a selective control under the already existing law. Briefly stated, his views are: first, in the decentralized international community, conflict cannot be eliminated. Use of non-violent coercive means below a certain level of intensity should be tolerated, since such use may serve to resolve conflict and bring about desired change. Secondly, the most coercive form of propaganda is the one that is addressed to the domestic audience, especially in totalitarian states, and the coercive effect of such internal propaganda can be reduced by propaganda transmitted from outside. For this reason, it is not desirable to control transnational propaganda. Thirdly, it is difficult to distinguish between "information" and "propaganda," "truth" and "falsehood," and so an attempt to regulate propaganda encounters serious difficulties. Fourth, there is now no consensus on when a state is or is not responsible for propaganda activity, which also renders regulation difficult. Fifth, with the advent of nuclear weapons the use of the military instrument has become extremely dangerous, and in those contexts wherein the military instrument can serve to bring about a desired legislative change, it should be permissible to use non-violent instruments. Sixth, the international community lacks the will and means to restrain the super-powers and their interventions in the affairs of small nations by propaganda and other means. Finally, in situations wherein it is necessary to express an international consensus that a particular conduct is a threat to the peace, propaganda should be available to articulate the condemnation.

Given these factors, Professor Falk says, among the two major power blocs, mutual restraint is all that can be advocated. At regional levels, however, such as in regard to South Africa, hostile propaganda may have to be used as a coercive sanction. In a third set of cases, in which

97. Richard A. Falk, "On Regulating International Propaganda," 31 *Law and Contemporary Problems* 622, 624 (1966).

two small powers outside the major power blocs are involved, and neither of the super-powers has an incentive to get involved, propaganda may be controlled toward attaining the objective of preventing the outbreak of violence. For this purpose no new law need be developed. Most of these ideas cannot be disputed and they are given attention in this book, though not all at one place.

In the present study, a departure is made from prior approaches in three respects. First, it has been pointed out that the outcome and effects of mass communication and propaganda techniques on the audience vary with several contextual factors and the policy choices made should bear relevance to the expected outcome and effects. For these reasons, it is necessary to discuss issues of policy in terms of the degree of intensity of use of the ideological instrument and the levels of expectations of the outcomes based upon all the significantly relevant factors, rather than upon absolute permissible and impermissible categories.⁹⁸ Second, the overall goal of legal policy is set out as the upholding of human dignity, i.e., securing widest access to the shaping and sharing of all human values.⁹⁹ "International peace" without elaboration is regarded as an unsatisfactory goal, since it could be peace at any cost, in particular of freedom of expression. At a lower level of abstraction, the policy is set out as promotion of the enlightenment value, or freedom of information. This policy is considered as capable of achieving three objectives: it promotes the enlightenment value for its own sake as a human value; it minimizes the disturbing influences of the use of techniques of propaganda and other operations on the information process; and it counteracts the coercive effects of the use of the ideological instrument.¹⁰⁰ Parallel to the policy of promotion of the enlightenment

98. D'Amato, note 96 above, stated that instead of simply stating that many questions were matters of degree, the issue should have been considered whether any line could be drawn at all. It is a matter of common experience that legal decisions are not evaded because of the difficulty encountered in drawing the separating line. It is difficult to draw the line separating day and night, spring and summer, life and death, obscene and artistic expressions and so on. There are innumerable categories like these. If the decision-maker decides to give a decision, he does not find it difficult to draw a line. He even creates categories with imprecise separating lines, such as custom and usage, air space and outer space, contraband and non-contraband etc. Line-drawing is a legal technique which can be employed without much difficulty once the policy choice is made; and no doubt sometimes the difficulty of drawing the separating line is put forward as a justification for a policy choice of no action.

The reviewer was of the view that my using the categories taken from Professor Lasswell's writings (based upon political science, communication, psychoanalysis and behavioral sciences) gives the book a sense of organization that is not really there. Let the readers be the judge.

99. See below, p. 77.

100. D'Amato, note 96 above, wrote that I have a large blind spot for the information effects of counter-propaganda. At p. 60 below, one may find: "Even the worst propa-

value is postulated the policy of regulation of the use of coercion. The pattern of regulation envisaged does not rely simply on coercive sanctions, but on persuasion and promotional measures as well.¹⁰¹ However, it is realized that there can be situations in which these two policies cannot be reconciled, and such situations are of varied character giving rise to varied expectations of detriment to community values. It is, therefore, suggested that decisions be reached in relation to them by taking into account the expectations of the outcome and effect of the activity in the particular context, and balancing the two policies of promoting the enlightenment value and regulating coercion.¹⁰² Finally, it is necessary to have a comprehensive framework of regulation which, under favourable conditions, might be used to achieve the goal of human dignity. The aim of this book is to set out such a framework. Under worse conditions, even the modest regulation of which Professor Falk hopes for may not be realized. The super-powers may not have any incentive to stop local small power conflicts, and others may not have the capability or desire to do so.

The concept of freedom of information is based upon Article 19 of the Universal Declaration of Human Rights.¹⁰³ During the recent debates in UNESCO and elsewhere connected with the New International Information and Communication Order (NIICO), two ideas were put forward as a sort of gloss over Article 19. First freedom of information should include not only a "free flow of information and ideas" but a "free and balanced flow."¹⁰⁴ Secondly, the concept of

ganda may convey some information, and depending upon the ability of the audience to critically examine and analyse it, fairly realistic information." Also p. 286. At page 276 below, I state that the ideological strategy may be employed to reduce the evil effects of the use of the instrument by the opponent, one of the obvious means being correcting misperceptions. I am, furthermore, accused of being unmindful of the fact that counter-propaganda is used as a reprisal or in retaliation. But see below at pages 171 and 276 where the use of the ideological instrument of coercion as a reprisal, or as a permissible counter-measure to obtain cessation of initial coercion, is mentioned. And cf. the view of Percy E. Corbett, *The Growth of World Law* (Princeton, N.J., Princeton Univ. Press, 1971), p. 174 n.

101. See below pp. 263-275.

102. D.H.N. Johnson, review, 17 *Int'l and Comp. L.Q.* 790 (1968), queries, referring to the recommendation on *self-determination*, below at p. 123, in what way the "contextual" approach, claimed to be "highly scientific," differs from the traditional method in bringing clarity. It is submitted that the contextual approach brings in greater clarity not in the manner of formulating verbal recommendations, but in directing attention to the contexts in reference to which policies were decided upon and verbally expressed in the form of "rules," and to the need to examine the particular contexts before applying the "rules" to the present or future situations.

103. See below, p. 78.

104. J. Richstad and M.H. Anderson, "Policy Contexts for News and a New Order," in Richstad and Anderson, note 13 above, pp. 11, 19; also Jean D'Arcy, "The Right to Communicate," in Richstad and Anderson, note 13 above, pp. 118, 125.

freedom of information should be replaced by the more comprehensive concept of "freedom of communication," a concept as yet inchoate, but which includes the freedom of one social group to communicate with another.¹⁰⁵ The first idea or demand is intended to remedy the current feature in the world community of predominant flow of news from the developed North to the developing South. A concept of freedom of information, it is contended, which facilitates the South communicating with the North, should posit a "free and balanced flow," and not simply a "free flow." The idea of freedom of communication is not very much different from this.

The idea is developed thus: natural human communication is mutual, horizontal, whereas mass communication is mostly one-sided and vertical. Given the structure of the mass communication industry currently prevailing in the world, the communication flow is from North to South and largely one-sided. Freedom of communication implies free communication not only among individuals but also from community to community. There is a necessity to recognize this large freedom to communicate, of which freedom of information of the individual is only a part.

The proposal for NIICO was attacked by the Western media mainly for a number of reasons. First, the reports of the MacBride Commission, preliminary and final, called upon all nations to formulate their national communication policies, and this was seen as an invitation for state intervention in the operations of the mass media, presenting thereby a threat to the freedom of information as practised in the West. Secondly, the reports spoke about the responsibilities of journalists who gather information, to use such information for advancing certain purposes specified in the reports. It was feared that the emphasis laid on responsibility would encourage governments to impose restrictions on the operations of journalists, and those who do not report events as desired by the governments would face penalties. Thirdly, the discussions of NIICO in UNESCO carried the implication of a role for UNESCO in the ordering of the operations of mass communication in the world, a role that had not belonged to it at all. Fourthly, it was asserted that there was no need for a radical restructuring of the world mass communication process, and, hence, no need for a NIICO, though there was agreement that a genuine case exists for the Third World developing its own mass media agencies and capability, and for the media of the developed world to gain and display a better understanding of the problems and aspirations of the developing countries.¹⁰⁶

105. Ibid.

106. See Righter, note 86 above, p. 64.

Even the staunchest protagonists of the idea of NIICO do not envisage a sudden radical transformation. In the words of Mustapha Masmoudi of Tunisia, a leading advocate of the idea and a member of the MacBride Commission, "It is no ready-made recipe, which would enable an unjust situation to be transformed overnight into one less unjust The aim must be rather to initiate a process at national, regional and international levels."¹⁰⁷ The MacBride Commission affirmed that "Control over communication content is not easy to harmonize with respect for individual rights, notably the right to dissent and debate", and that "no government, however wise, ought to be the sole judge of what the people need to know, and still less what the people would be allowed to say."¹⁰⁸ It urged the adoption of the principle of democratization of communication, which implies that (a) the individual become an active partner and not a mere object of communication, (b) the variety of messages exchanged increase, and (c) the extent and quality of social representation or participation be augmented.¹⁰⁹ The Commission emphasized the need for a pluralist communication order. It stated: "The legal framework should, in principle, safeguard and encourage pluralism, it should enable any individual to obtain information and opinion from various sources and to select freely between them."¹¹⁰

It is needless to enter into all the controversies surrounding the MacBride Commission report here. It suffices to note that the Commission subscribed to the individual right to freedom of information and the principles of democratization and pluralism. Pluralism is an essential aspect of the liberal democratic philosophy of freedom of expression and "free trade in ideas."¹¹¹ It is consistent with the policy of minimizing the incidence of coercion by the ideological instrument on the individual.¹¹² It is also consistent with the basic policy of securing widest access to the shaping and sharing of the human value of enlightenment.¹¹³ We may affirm it as one of the basic principles of policy.

Supplemental to Chapter 4 below, a detailed statement of the policies concerning the various claims and counter-claims mentioned in the previous section will now follow.

107. Note 83 above, p. 86.

108. MacBride Report, note 3 above, p. 121.

109. *Id.* p. 166.

110. *Id.* 208.

111. Holmes J. in *Abrams v. U.S.* 250 U.S. 616, 630 (1919).

112. See below, p. 78, pp. 30-31, 61-62.

113. *Ibid.* p. 77.

Participation

In addition to the basic policies of promoting freedom of information and of regulating transnational coercion, the policy mentioned below is, in relation to international officials, for safeguarding the effective functioning of the organization in which the official is employed.¹¹⁴ In the international civil service, an official continues to be a national of his own state while serving the organization. He may be non-official in his own state or an official on secondment to the international organization. He is, however, expected to assume a perspective international in character.¹¹⁵ The functioning of the organization concerning those in its service is designed to ensure that the employee does not act in any way that would reflect on his character as an international civil servant.¹¹⁶ In general he is required to obey the law of the state in the territory of which he happens to be, and the immunities and privileges he is accorded are meant for the efficient functioning of the organization and not for his own benefit.¹¹⁷ The policy to be adopted concerning the participation of an international civil servant should be based upon these principles.

The responsibility of an international organization for the activities of its employees should, it appears, be limited to what the organization authorizes the employee to do, what comes within the scope of the employee's duties and functions, and within the purview of the organization's disciplinary control over him. If the activity does not fall under any of these headings, holding the organization responsible for his activity would imply requiring the organization to exercise control over the employee beyond what is necessary for effective functioning of the organization and would very likely result in needless limitation of the employee's freedom of expression. The responsibility should, therefore, be limited only to those activities that fall under these three headings.

The responsibility of the state in whose territory an international civil servant initiates a coercive use of the ideological instrument is multifaceted. In general, the responsibility of such a state seems to be secondary and residual, for if the international organization itself discharges the responsibility there would be nothing left for the state to do. It is right that the organization should be responsible for what comes within the functions of its official or its disciplinary control over him. If the organization fails to discharge its responsibility, then the

114. Ibid. p. 81.

115. See Balfour Report, L.O.N., *Off. Journ.* 1, No. 4 (June 1920), p. 137; A.W. Rovine, *The First Fifty Years, The Secretary-General in World Politics 1920-1970*, Leyden, A.W. Sijthoff, 1970, p. 34.

116. See below for detailed statement, pp. 124-127.

117. Ibid. p. 124.

state within whose territory the activity occurs may be called upon to bear responsibility.

The state can be held responsible if the wrongful activity is attributable to it; when not attributable, the state may be held responsible if it fails to exercise its territorial authority in the manner required of it in controlling the activity within its territory.¹¹⁸ For determining attributability, it is necessary to observe the character of the organization and the relationship between the organization and the state. Then a reasonable estimate may be made of the level of identification that exists between the organization and the state. The level of identification between an organization and a non-member is most likely to be nil. There are among organizations some which are formed simply to harmonize the competing interests of different states and to promote cooperation among them in pursuit of whatever common interests they have. The level of identification of a member of such an organization with the organization stands in marked contrast with the level that exists, at the other extreme, with an organization that is a military alliance of its members. In estimating the level of identification, generally and on specific issues, reference may also be made to the voting behavior of the state within the organization, and its declarations and pronouncements outside. From the nature of the organization, the relationship between the organization and the particular member state, and the behavior and declarations of the state on the issue involved, it may be determined whether the activity, in violation of international law, can be attributed to the state within whose territory the activity occurs.

If attribution does not appear reasonable, inquiry should be directed to the issue to what extent the state should control the activity of the organization. Before an international organization starts functioning in the territory of a state, it is common for the state and the organization to enter into an agreement. There are an innumerable number of such agreements at present. By and large their purpose is, on the one hand, to facilitate the free, independent functioning of the organization, and on the other, to safeguard the public order of the host state. It may be noted that, in relation to non-officials, the state is required to exercise such degree of control over them, in the discharge of its responsibility, as measures up to civilized standards.¹¹⁹ That is, standards generally accepted by the world community as adequate. A similar standard of control appears apposite with respect to international organizations, provided that a high level of identification does not exist between the

118. Relevant principles of state responsibility are mentioned below at pp. 93–97 and 122–123.

119. *Ibid.* p. 97.

state and the organization so as to bring into application the principle of attributability. The standard may be deduced from the large number of agreements between host states and international organizations currently in existence.

The question whether a state can be held responsible for the acts of an international organization of which it is a member, it seems, can be answered by reference to the level of identification between the organization and the state. In the case of the military alliance type of organization, at one extreme, there is every justification for attributing responsibility in the same manner as a state is attributed for acts of its executive organs. The alliance is in a way the state's executive instrumentality. On the other hand, where the level of identification is low, as in the case of an organization to promote cooperation among states having competing interests, the analogy of the responsibility of the state with respect to non-officials may be adopted if there are no circumstances which justify the attribution of the activity to the state, such as voting behavior of the state in the organization or policy declarations of the state indicating its active role in promoting the activity.

Relative Capabilities: Access to the Geostationary Orbit

The demand for access to the geostationary orbit is very likely to increase in the decades to come¹²⁰ and technology might help to augment this limited natural resource in an adequate measure.¹²¹ There are at present, as will be noticed in next section, two competing principles put forward by those already using the resource and those aspiring to use it: The principle of "first come first served," and of allocation specifically to various states. The policy that is recommended here is for facilitation of optimum utilization of the limited resource at any time. It does not seem rational to keep any part of it unutilized to satisfy the claims for its use at some future uncertain date. On the other hand, the

120. According to one projection from the situation in 1985, by 2025 A.D. there would be 20,000 different satellite systems in operation. Pelton, note 71 above, p. 30.

121. In addition to the equatorial orbit, it seems possible to operate in the orbit 0.5° on either side of the equatorial plane. See the *Secretariat Study*, note 71 above, U.N. Doc. A/AC.105/203/Add. 4 (18 May 1983), para 25. The Soviet Union has successfully experimented with a 12 hour elliptical orbit having the distance ranging from 400 to 4,000 k.m. from the earth and at an inclination of 62.8.° The system, having 2 to 4 satellites, was found useful for communication in northern latitudes. *Ibid* para 21. Augmentation of the resource is stated to be possible by: (a) developing alternative orbits; (b) making satellites which can perform different functions and developing antenna farms; (c) reuse of the same radio frequencies at suitable distances; (d) developing earth stations which can receive signals from different satellites simultaneously; and (e) developing techniques such as time division multiple access and digital speech interpolation (TDMA and DSI). See Pollak and Weiss, note 9 above, p. 553; Lovell and Cuccia, note 11 above, p. 42.

policy of promoting a free and pluralistic forum calls for an assured access to any participant who is capable and desirous of using the resource for the purpose of dissemination of information. When we state this we do not ignore the fact that satellite uses are varied and include defence, meteorology and remote sensing. The limited resource should be subject to periodic, equitable reallocation, taking into account the needs and capabilities of the existing users and of those who seek to initiate the use for their own purposes.

Strategies: Direct Television Broadcasting by Satellite and Consent of the State

The proposition that direct television broadcasting by satellite to a state should be only with the consent of the state to which transmission is made runs counter to the policy of the promotion of freedom of information and free and pluralistic forums. The proposition amounts to saying that the people of a state should view only those broadcasts which the rulers of the state permit. It enables the rulers to abuse their authority to disseminate their own versions of events to the people of the state and to exclude versions that contradict their own versions. While dissemination by the medium of pictures received from foreign sources – pictures received in print, by wire or wireless and movies – can be controlled by the government of a state, radio broadcasts cannot be stopped by the government. For that to exist, the extreme measures of jamming and deterrent measures against listening are available. The present effort on the human rights front is to compel the state to accept restrictions on its power to control disseminations internally and flow of information across state boundaries.¹²² To accept the prescription that the television medium – which is essentially a combination of radio broadcasting and pictures and movies – can be used to communicate with a foreign audience only with the consent of the government of the state is to reinforce state power adversely to human rights, especially the right to freedom of information. If one wishes to make a concession, one might accept a restriction on specified types of direct television broadcasts by satellite, but to accept a blanket ban making consent a prerequisite is to undermine the move to promote the human right of freedom of information.

122. Attention may be invited here to the *Helsinki Declaration on Information*, Conference on Security and Cooperation in Europe, Final Act, 1975, 14 International Legal Materials 1293 (1975): “The participating states .. make it clear their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage cooperation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from a participating state exercise their profession in another participating state, and express their intention in particular . . .”

Outcome: Undermining of Local Society, etc.

All groups in the world desire to retain their identity and individuality. Consciousness of and attachment to the identity and individuality are necessary for the group to pursue collective action for the advancement of the group as a whole and its members individually. Nations and peoples have inherited tradition, culture and language which they value very highly and no nation or people would like to be forced into a common mold. Cultures and civilizations, however, do not remain static. Nations learn ideas from outside as well and adapt themselves to changing conditions, moving in the direction that seems the best in the prevailing situation. Indeed, a culture or civilization that remains insular and does not change faces the danger of decadence and death. The weight of inherited practices that have lost meaning and relevance is too heavy for the group to bear. However, the concern that is currently expressed, even in developed countries, is about a rapid and unmanageable change induced by intensive communication from outside. Commercial advertising promoted by multinational corporations draws particular attention.

The MacBride Commission discussed this issue and was of the view that the best answer was not in negative restriction on the flow of communication.¹²³ It suggested that both communicators and communicatees should be conscious of the dangers of sudden influx of communication, exposing the audience in an isolated community to an alien culture. Avoidance of the dangers, in the Commission's view, is a shared responsibility of both the communicators and communicatees. The difficulty involved, however, in discharging such responsibility was not examined by the Commission. The view we take here is that the best method of protecting a culture or civilization is by creating opportunities to describe what is worth preserving, and not by suppressing criticisms of the culture, or information about rival cultures.

Effects: Undermining of Human Rights

It does not require much effort to show that the claim, however attractive at first glance, that a communication should be prohibited if it is likely to undermine human rights is unsustainable. Human rights are not absolutes, and each right is subject to varied limitations under different conditions. Human rights conflict among themselves at some point, the most well known conflict being between liberty and equality. The different human rights must be harmonized so that together they encourage human welfare and dignity. Establishing an appropriate range of a human right, generally and in particular situations, can be

123. MacBride Report, note 3 above, pp. 163-165.

done only when a free debate is possible. The human right to seek, receive, and impart information is most essential for the sustenance and maximized observance of all human rights. It may be asked, for example, whether communication should be permitted to propagandize *Apartheid*. Our answer is that the surest way of laying the doctrine to rest is to expose fully its fallacy and not impose a restriction on the circulation of the idea itself. Management of the conflict which a vigorous propagation of the doctrine might engender is a different question, and it must be done by means suitable and appropriate to the intensity of the conflict.

TRENDS OF DECISION

In this section the recent trends of decision will be observed, and if they appear to be moving away from policies for which preference has been expressed, suggestions will be made as to how the trends may be modified.

Participation

A very difficult problem encountered in connection with regulation of the use of the ideological instrument of coercion concerns state responsibility for participation by non-official agencies and individuals. The problem is discussed below.¹²⁴ The problem continues to be very much alive and may be observed from paragraphs 8 and 9 of the DBS Resolution of the General Assembly¹²⁵ as follows:

8. States should bear international responsibility for activities in the field of international direct television broadcasting by satellite carried out by them or under their jurisdiction and for the conformity of such activities with the Principles set forth in this document.

9. When international direct television broadcasting is carried out by an international intergovernmental organization, the responsibility referred to in paragraph 8 should be borne both by that organization and by the State participating in it.

These paragraphs widen state responsibility. If they refer only to

124. Chap. 5 below.

125. See note 48 above. The Resolution was adopted on the report of the Special Political Committee, U.N. Doc.A/37/646 (1982). The Resolution was adopted by 107 votes against 13, with 13 abstentions. Those who opposed were: Belgium, Denmark, Federal Republic of Germany, Iceland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Spain, United Kingdom, and United States. Abstentions: Australia, Austria, Canada, Finland, France, Greece, Ireland, Lebanon, Malawi, Morocco, New Zealand, Portugal and Sweden. It may be noted that the Resolution lacked the support of practically the whole of the West.

technical matters such as radio frequencies, there could be little objection since states have the responsibility to maintain the order concerning distribution of the radio spectrum resource. But since paragraphs 1 to 3 refer to the purposes for which the broadcasting should be used, the responsibility referred to in the principles cannot be understood as confined to technical matters only. Paragraph 8 specifically states that the responsibility extends to securing conformity to all the principles set forth in the Resolution, and can cover obviously the content of what is transmitted.¹²⁶ This paragraph lays the same responsibility on the state with respect to all activities taking place in its jurisdiction, whether of state officials, non-officials, or international civil servants. If the activity is carried out by an international intergovernmental organization, the responsibility is to be borne by the state within whose territory the activity is carried out, as well as by the organization and all the state members of the organization.

The implications of these principles need notice. In order to discharge the responsibility envisaged in paragraphs 8 and 9, the state within whose jurisdiction the activity occurs would have to exercise effective control over the activity, whether it is of state officials, non-officials, or international officials. Furthermore, each member of an international organization would have to possess the power to veto any proposed activity of the organization, since no member would like to bear responsibility for an activity unless it had previously given its consent to it. It may be that paragraphs 8 and 9 are intended to be strictly limited to direct television broadcasting by satellite, which is regarded by those who sponsored and voted for the Resolution as inherently highly dangerous. There is indeed no warrant at present for such an assumption, since the broadcasting is highly vulnerable to disturbance. If we discard the "bullet theory" approach, it is yet to be proved that the combination of audio and visual elements makes communication so manifoldly more effective than when either of them is used singly to justify a new pattern of regulation.

The recommendation that may be made with reference to state responsibility for the activity of international officials is thus: In the absence of circumstances justifying attribution of the activity to a state, responsibility should be confined first to the international organization, and if it fails to furnish the necessary redress, the responsibility may be extended to the state in whose jurisdiction the activity has taken place. The responsibility of the latter arises from the fact that it has provided the territorial facility for the activity. However, responsibility should

126. Noteworthy is the fact that Principle 1 (paragraph 1) reaffirms "the right of every one to seek, receive and impart information and ideas as evolved in the relevant United Nations instruments."

not result in the state being required to exercise a degree of control over the organization that is in excess of the control which host states generally exercise. For ascertaining the norms to be observed in such situations, reference is necessary to the agreement entered into between the host state and the organization for carrying out the specific activity, and the agreements in general between host states and the international organizations operating in their territories.

A clarification seems necessary concerning what is stated below with respect to the United Nations and its civil servants when applied to a regional organization with limited membership.¹²⁷ The statement that such an organization will rarely be used as a means of coercion against members seems now not accurate. Most conspicuously, the Organization of the American States has experienced serious conflicts among its members. In the first place, the utterance of an international official may merely infringe upon a prescription of the organization. In that case, the affected member can complain to the head of the executive organ of the organization or other competent organ for redress. On the other hand, if the dissemination in question involves a breach of a general international prescription, the complaint can be addressed to the organization; if adequate redress is not forthcoming, to the host state of the organization, or the state in whose jurisdiction the utterance has been made. The former will treat the complaint taking into account the agreement by which the organization is permitted to function in its territory and the latter will treat the utterance as if made by a non-official.

More significant than the incidence of responsibility is the question whether the utterance, impermissible under general international law, is authorized by or permissible under the rules of the organization. An authorization to make it permissible may be derived from the constituent instrument of the organization, the authority of its organs, and the express and implied powers of the officials.¹²⁸ For example, we may

127. See below, p. 123.

128. The implied powers of the Secretary-General of the United Nations were explained by Dag Hammarskjöld in his speech on being elected to the Office for the second term thus: "I do not believe that the Secretary-General should be asked to act, by the Member States, if no guidance for his action is found either in the Charter or in the decisions of the main organs of the United Nations; within the limits thus set, however, I believe it to be his duty to use his office and, indeed, the machinery of the organization to its utmost capacity and to the fullest extent permitted at each stage by practical circumstances . . . On the other hand, I believe it is in keeping with the philosophy of the Charter that the Secretary-General should be expected to act also without such guidance, should this appear to him necessary in order to help in filling any vacuum that may appear in the systems which the Charter and traditional diplomacy provide for safeguarding of peace and security." G.A.O.R., 12th Sess., Plen-

state that during the 1960's, when there was a military dictatorship in Greece, the Secretary-General of the Council of Europe would have been definitely within his rights if he denounced violations of human rights in that country.¹²⁹ The main considerations that should influence decisions in this connection are freedom of expression of the official, efficient functioning of the organization, and preventing an abuse of the special position occupied by the official as an international civil servant.

Objectives

In Chapter 7 below, some of the post World War II war crime trials were examined, and on the basis of the discussion it is stated that, at similar future trials, not only would the use of violence transnationally for aggression be regarded as criminal, but so would participation in the use of the ideological instrument for preparing people psychologically, or in furtherance of a plan or conspiracy, for such aggression. It is made clear that such a criminal charge, with respect to participation in the use of the ideological instrument as well as others, is likely to be preferred only against a few individuals and the possibility of such trials themselves being held is rather remote.¹³⁰ This discussion leads to a

ary, 690th Mtg., paras. 72 and 73. This statement may be adopted with suitable modification with respect to international civil servants in general.

It may be further noted that the "neutrality" expected of an international civil servant is of a limited character as Dag Hammarskjöld explained on another occasion: "It is obvious from what I have said that the international civil servant cannot be accused of lack of neutrality, simply for taking a stand on a controversial issue when this is his duty and cannot be avoided." His address on "The International Civil Servant in Law and in Fact," at Oxford University on May 30, 1961, reproduced in 5 Andrew W. Cordier and W. Foote, Eds., *Public Papers of the Secretaries-General of the United Nations* (New York and London, Columbia Univ. Press, 1969), p. 471, 488.

129. I am indebted to D.H.N. Johnson, book review, note 102 above, for raising this issue.

130. See pp. 151 and 273. It is nowhere stated that a state can demand that whenever propaganda is carried on within another state that it be stopped on the ground that it is preparation for aggression. However, D'Amato, note 96 above, questioned whether the conclusion drawn does not permit such a demand being made, how such a demand could be made in the face of constitutional protection of free speech in the demanded state, and whether the possibility of such a demand being made would contribute to peace. By way of an example, he questioned whether demands could be made to stop the activities of the *John Birch Society* in the United States. It may be noted, first, that acts in the nature of preparation are regarded as punishable in any criminal system only when the conspiracy or plan to commit the criminal act, of which the alleged acts are preparations, is established. In the post-World War II trials, conspiracy was proved judicially. Absent such proof, the charge of conspiracy or plan can be readily denied, and the disseminations made may be stated to be an exercise of freedom of expression. Such denials and affirmations were made by the demanded governments even in the last century. See below pp. 100 to 103. Second, the *John Birch Society* stands nowhere in

treatment of the concept of "aggression" and its allied notion of "ideological aggression." The adoption by the United Nations General Assembly in 1971 of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations,¹³¹ and of the Resolution on the Definition of Aggression in 1974¹³² are very significant events which may be noted as follows.

The Declaration Concerning Friendly Relations was the outcome of discussion in a Special Committee of the General Assembly from 1964 to 1970 and the adoption of the text was by consensus. The International Court of Justice, in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*,¹³³ considered that the consent of Members to this resolution was expressive of "acceptance of the validity of the rule or set of rules declared by the resolution by themselves," and "an indication of their *opinio juris* as to customary law on the question." One of the principles declared is: "A war of aggression constitutes an international crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, states have a duty to refrain from propaganda for wars of aggression." This is a more precise statement than the assertion generally made of the objectionable character of "war propaganda." A comparably precise statement was made by the Soviet scholar

comparison with the Nazi and Fascist governments and parties of Germany and Japan. In 1961, the *Society* acquired notoriety by charging that former Presidents of the United States, Roosevelt, Truman and Eisenhower, were agents of communists, and demanding the impeachment of the Chief Justice, Earl Warren. The Democratic Party's platform condemned the *Society* at its Convention in 1964 as extremist, and the Republican Party would have done likewise but for the opposition of the conservative wing. In the face of these facts, no one can claim that the *Society* articulates the U.S. Government's policy. The *Society*, having only about 100,000 members, cannot itself mount an aggression nor can it be expected that the proximate outcome of its activity is to force the U.S. Government to launch an aggression. Finally, there is the plea available to the demanded state that it is only preparing its people to meet the dangers of attack from outside. See below, pp. 152-153 and 211.

131. Resolution 2625 (XXV), Oct. 24, 1970. The Special Committee to elaborate the U.N. prohibition of the use of force was established in 1963. It held discussions in six sessions. The text of the Declaration is reproduced in 65 A.J.I.L. 243 (1971). On the discussion in the Special Committee and on the principles adopted, see P.H. Houben, "Principles of International Law Concerning Friendly Relations and Cooperation Among States," 61 A.J.I.L. 703 (1967); R. Rosenstock, "The Declaration of Principles of International Law Concerning Friendly Relations: A Survey," 65 A.J.I.L. 713, 716, 716n (1971).

132. Adopted without vote, Resolution 3314 (XXIX) Dec. 14, 1974.

133. I.C.J. Rep. p. 14, pp. 100-101 (paras. 188 and 191).

Yuri Bobrakov, who stated that "war propaganda" is "a means for preparing for aggressive war."¹³⁴

One of the issues on which discussions centered during the extensive debates on the definition of "aggression" during the 1950's was the meaning of "force" used in Article 2(4) of the United Nations Charter.¹³⁵ According to one view it was limited to armed force, and according to the other, it included means other than violence as well. The concepts of "ideological aggression" and "economic aggression" were subjects of rather extensive discussion. The Declaration Concerning Friendly Relations, however, confined the meaning of "force" to "armed force." The expression "ideological aggression" figured in the discussion in the special committee but did not find a place in the Declaration.¹³⁶ The Resolution on Definition of Aggression, adopted without vote by the Assembly, is open-ended and it limits the concept of aggression to the use of "armed force." (Article 1) The first use of force in contravention of the Charter, it is stated, shall constitute "*prima facie* evidence" of an act of aggression, but the Security Council is declared to be competent, in the light of other facts, including the possibility that a particular use of force and its consequences are not of sufficient gravity, to conclude that the inference that an act of aggression was committed is not justified. (Article 3) It is stated in Article 5(1) that no consideration of whatever nature, whether political, economic, military or otherwise, should serve as justification for aggression.

These developments could lead one to infer that any discussion of "ideological aggression," as found below,¹³⁷ has no utility. But it would appear that it is not right to infer this for the reason that the phenomena of non-military aggression are acknowledged in Article 6 of the Inter-American Treaty of Reciprocal Assistance, 1947 (the Rio Treaty), which states: "If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack" At least under the Inter-American system, a non-military aggression, in particular an "ideological aggression," endangering the peace of any American state, might set in motion the mechanism of Article 6 of the Rio Treaty: "the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of aggression or, in any case, the measures which should be taken for common defense and for the maintenance of

134. "War Propaganda: A Serious Crime Against Humanity," 31 *Law and Contemporary Problems* 473, 475 (1966).

135. See below, p. 154.

136. See Houben, note 131 above, p. 154.

137. See below, pp. 160-167.

the peace and security of the Continent.’’ Consistent with the Declaration Concerning Friendly Relations and Definition of Aggression, non-violent counter-measures may legitimately be agreed upon.

The permissible and impermissible categories of major coercion are discussed below within the framework of the aggression and self-defense dichotomy.¹³⁸ The International Court of Justice adopted for the same purpose the dichotomy of ‘‘armed attack’’ and ‘‘individual and collective self-defence’’ in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*,¹³⁹ focusing on the text of Article 51 of the United Nations Charter. The Court explicitly refrained from considering the ‘‘lawfulness of a response to the imminent threat of armed attack’’ for the reason that the parties did not raise that question.¹⁴⁰ The Court’s decision was limited to ‘‘the case of an armed attack which has already occurred.’’ Individual or collective self-defense is permissible, according to the Court, only against ‘‘armed attack.’’ Where the alleged assistance given to armed bands or groups in a foreign state does not come up to a certain level, it does not amount to ‘‘armed attack,’’ but might amount to ‘‘threat or use of force’’ or ‘‘intervention in the internal or external affairs of other States.’’ As against such offensive activity short of ‘‘armed attack,’’ the victim has ‘‘the right to take counter-measures,’’¹⁴¹ but no right of individual or collective self-defense.

The above does not seem to affect the position that self-defense can be exercised against actual armed attack and also when it is imminent.¹⁴² The use of the ideological instrument to influence internal audiences, however, can never justify, as now spelled out by the Court, self-defense. There must be other factors which point to the imminence of armed attack. There is the danger, however, in particular with regard to the nuclear strike forces of the super-powers, that the use of the ideological instrument might communicate a false signal of imminent armed attack. Such a catastrophe can be avoided by the observance of care in the use of the instrument on the one hand, and a measure of tolerance on the other of the use by the adversary, whether the audience is internal or external. When there is actual armed attack,

138. See below, p. 152.

139. Note 133 above, para 193.

140. Ibid. p. 194.

141. Ibid. para 201.

142. The Court did not rule out self-defense against imminent armed attack. Art. 2 of the Definition of Aggression, which lays down the general rule of first attack, leaves the Security Council discretion to decide that it is not an act of aggression. Art. 5 of the Definition of Aggression states political, economic, military and other facts cannot be a justification for an act of aggression, but does not state that it cannot be for ‘‘self-defense.’’

usually large – scale use of military forces will be prominent and the use of the ideological instrument will be only supportive of the military instrument. In such a case, invocation of “self – defense” is most likely to be permissible. An “ideological aggression” that does not involve the military instrument or a threat to use it can be lawfully met, inferentially in the Court’s view, only by “countermeasures” which are within the limits of necessity and proportionality.¹⁴³

The way permissible and impermissible categories of coercion are labelled is unimportant as long as any coercion in response to an initial coercion must itself meet the tests of the limits of necessity and proportionality.¹⁴⁴

Self-Determination, Protection of Minorities and Human Rights

The Declaration of Principles Concerning Friendly Relations and Cooperation Among States¹⁴⁵ contains some paragraphs on self-determination, and the following may be noted in connection with the discussion of the permissibility to employ coercive processes to attain the goal of self-determination.¹⁴⁶

Every state has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, . . .

Every state has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their action against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

143. The Court leaves untouched the principles of necessity and proportionality (para 237), but takes the view that “self – defense” is permissible only against “armed attack.”

On pp. 170–171 below, the view is taken that reprisals involving the use of force are impermissible under the U.N. Charter. The Resolution Concerning Friendly Relations and Cooperation Among States, note 131 above, declares: “States have a duty to refrain from acts of reprisal involving the use of force.” The matter is however controversial. See Ian Brownlie, *International Law and the Use of Force by States* (London, Oxford University Press, 1963), p. 281; G. von Glahn (ed.) *Law Among Nations* (New York: MacMillan, 1965), p. 498; Richard A. Falk, “The Beirut Raid and the International Law of Retaliation,” 63 A.J.I.L. 415, 428 (1969); D. Bowett, “Reprisals Involving Recourse to Armed Force,” 66 A.J.I.L. 1 (1972). The category now introduced by the Court of “counter-measures,” apparently includes reprisals, and they can be forcible. For the view approving the Court’s statement of the law, see Tom J. Farer, “Drawing the Right Line,” 81 A.J.I.L. 112 (1987).

144. See below, p. 166.

145. Note 131 above.

146. See below, p. 175, for discussion in reference to the ideological instrument.

While there is an affirmation of the right of self-determination and foreign states are barred from using force to assist a government which is denying any section of the population under its rule the right, the government itself is not barred from using force to suppress the people's demand for self-determination. The people themselves are permitted to seek and obtain support from outside but only in accordance with the Charter. The International Court of Justice, however, in the *Case Concerning Military and Paramilitary Forces in and Against Nicaragua*,¹⁴⁷ distinguished between intervention for the benefit of forces opposed to the government of another state and such intervention connected with the process of decolonization, implying thereby the lawfulness of the latter.¹⁴⁸ Judge Schwebel expressed his disagreement with this view in his dissenting opinion.¹⁴⁹ In his view, while it is permissible to give people struggling for self-determination moral, political, and humanitarian assistance, it is not lawful for a foreign state to intervene in that struggle with force, to provide arms, supplies and other logistical support in the prosecution of the armed rebellion. Even if one goes by Judge Schwebel's formulation, it seems, short of direct or indirect military assistance, any form of assistance can be given including support by using intensively the ideological instrument. By analogy, it appears that this position can be maintained with respect to protection of minorities and promotion of human rights.¹⁵⁰

It may be seen in the above trend that there has been a clarification that "war propaganda" that is objectionable is propaganda for a war of aggression, i.e., for preparing the people of the state psychologically for such a war, and the clarification is welcome. Likewise is the clarification that, except under very exceptional circumstances when the use of the military instrument is predominantly involved, the use of the ideological instrument itself cannot form a justification for a response with the use of the military instrument. *The Military and Paramilitary Measures* case, although controversial in many respects,¹⁵¹ is non-controversial insofar as it expresses that "self-defense" and "counter-measures" should be governed by the principles of necessity and proportionality. The trend in favor of supporting the use of non-violent instruments of coercion, the ideological instrument in particular, to attain the objectives preferred by the world community in general – human rights, self-determination, protection of minorities

147. Note 133 above.

148. Ibid. para. 206.

149. Ibid. paras. 178–180.

150. See below, pp. 179–181, for discussion of permissibility of these objectives.

151. See, for example, the different views expressed on the Court's decision, "Appraisals of the ICJ's Decision: *Nicaragua v. United States (Merits)*," 81 A.J.I.L. 77–183 (1987).

and the like – is to be welcomed as well. The fear that such use might provoke violence cannot sustain the placing of restraints, for when the expectations of peaceful legislative processes for attaining the goals sought by the community in general are low, acts involving risk of violence for necessary change cannot be credibly deterred. Community restraints on recourse to violence are very weak now, but there is a general realization that armed conflicts have a very dangerous potential, and this induces much greater self-restraint than in the first half of this century, and, at a minimum, to try to keep conflict limited.

Relative Capabilities: Access to Geostationary Orbit

The Treaty on Principles Governing the Activities of States in the Exploration and Use of the Outer Space, including the Moon and other Celestial Bodies, Washington, London and Moscow, 1967, established certain principles concerning the uses of outer space. To state briefly, Article 1 of the Treaty states that the exploration and use of outer space shall be carried on for the benefit and in the interest of all countries, irrespective of their degree of economic and scientific development, and that outer space shall be free for exploration and use by all states without discrimination of any kind, on the basis of equality and in accordance with international law. Article 2 prescribes that outer space shall not be subject to national appropriation. Article 3 lays down that activities in outer space shall be carried on in the interest of maintaining international peace and securing and promoting international cooperation and understanding. Article 4 prohibits placing any nuclear weapons in orbit and requires that all parties shall use outer space exclusively for peaceful purposes. Article 9 directs that the parties shall be guided in the exploration and use of outer space by the principle of cooperation and mutual assistance, and shall conduct their operations with due regard to the corresponding interests of other parties to the Treaty. The article further requires that if any party has reason to believe that its activity would cause potentially harmful interference with the activities of other parties to the Treaty, it shall undertake appropriate consultations with them. A current user, with reason to believe that a planned activity of another could cause interference with its own activity, has a right to request consultation.

The above arrangement, it will be seen, is a very subtle one. There is, on the one hand, the right to use on the basis of equality, and national appropriation is prohibited. On the other hand, there is a right in favor of current users not to be suddenly disturbed by those who follow. In instances of conflict, the two are required to arrive at mutual accommodation by the process of consultation.

In 1976, however, eight equatorial states, Brazil, Colombia, Congo, Ecuador, Indonesia, Kenya, Uganda and Zaire, desirous of securing

their position from being foreclosed by prior users, met at Bogotá and issued a declaration. The Bogotá Declaration asserted that the segments of the geostationary orbit, a natural resource, lying over their territories were an "integral part" of their territories and under their complete and exclusive sovereignty. The states further declared that no device could be placed in the segments of the geostationary orbit above their territories without the "previous and express authorization of the concerned state," and that they did not condone the existing satellites. The Declaration conceded the right to transit the space above the states' territories to place in orbit a device authorized and approved by the International Telecommunications Union Convention. The segments of the orbit lying outside national jurisdictions were characterized as the "common heritage of mankind."¹⁵² The Declaration, it may be noted, conflicts with the Outer Space Treaty which by 1976 had become customary international law.¹⁵³

Colombia, Ecuador, Indonesia, and Kenya presented to the Twenty-Third Session of the Legal Sub-Committee of the United Nations Committee on Peaceful Uses of Outer Space a draft of principles governing the use of the geostationary orbit.¹⁵⁴ Principle 1 states that the geostationary orbit shall be used exclusively for peaceful purposes and for the benefit of all mankind. Principle 2 states that the orbit is a limited natural resource to be preserved in the interest of all states, taking into account the needs of developing countries and the rights of equatorial states. Principle 3 requires the equatorial states to preserve the corresponding segments of the orbit superjacent to their territories for opportune and appropriate utilization by all states, particularly the developing states. Principle 4 declares that the equatorial states shall have a preferential right to the segments of the orbit superjacent to the respective territories under their jurisdiction. Principle 5 directs the equatorial states to require their prior authorization for placement of any object in orbit for peaceful purposes in the segment superjacent to the territories under their respective jurisdiction, but to allow free transit. Principle 6 prescribes that all states shall cooperate to make an efficient and economic utilization of the geostationary orbit on a regional and global basis, directly or through the United Nations, its specialized agencies and other international organizations. Principle 7 expresses

152. For a discussion of the Bogotá Declaration, see S.S. Gorove, "The Geostationary Orbit: Issues of Law and Policy," 73 A.J.I.L. 444, 450 (1979).

153. See, e.g., Bin Cheng, "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?" 5 *Indian Journal of International Law* 1, 35 (1965), for the view that the declaration of the principles of use of outer space by the resolution of the General Assembly, on the basis of which the treaty was later prepared, resulted in customary international law.

154. U.N. Doc. A/AC.105/C.2/L.147, March 29, 1984.

that developed states should facilitate and accelerate space science and technology transfers to developing countries to enable them to achieve capability to use the geostationary orbit to serve the objective of their national development. Principle 8 requires states and international organizations operating space objects to remove them from the orbit when they become non-operational. These principles, it may be observed, claim for the equatorial states a preferential right but not an exclusive right.¹⁵⁵

The Sub-Committee, after discussion, preferred to await the allocation of radio frequencies at the World Administrative Radio Conference (WARC) scheduled for 1985 and 1988. The main reason for such a decision was that physical distance between the satellites in the geostationary orbit appeared to be a less serious problem than avoidance of disturbance among radio frequencies used for operating the satellites.¹⁵⁶ The task of space-spectrum distribution was for the present left to the International Telecommunications Union (ITU) and its radio frequency distribution conferences.

Television broadcasting, one among the purposes for which communication satellites are used, is done on the C, Ku, and Ka bands. The overall objective of the ITU is to maximize the channel capacity in terms of depth (or the quantum of messages transmitted), distribution (or number of places to which the message is transmitted), and range (or the number of places from which messages are received).¹⁵⁷ The three aspects are no doubt not fully compatible with each other. Article 33 of the ITU Convention specifies other objectives: efficient and economic use and equitable access to countries or groups of countries.¹⁵⁸

The ITU's voluminous Table of Frequency Allocations currently in force was adopted at WARC, 1979. Under the Radio Regulations, each state may start using a frequency allocated to its service, and each user must notify the International Frequency Registration Board of such

155. There is a general trend on the part of developing states to claim that they are entitled to concessional treatment from developed states to enable them to develop. The Charter of Economic Rights and Duties of States, adopted by the General Assembly Res.3281 (XXIX), Dec. 12, 1974 (the New International Economic Order (NIEO) Charter), despite the opposition/abstention of Western nations, contains several provisions calling for preferential treatment of the developing states. For the text see 69 A.J.I.L. 484 (1975). For a discussion of the feasibility of such treatment, see Julius Stone, note 94 above, p. 155.

156. At the distance of 35,800 k.m. from the earth, one degree angular distance equals nearly 750 k.m. and collision of satellites is unlikely. See G.C. Staple, note 76 above, p. 704. Technology is also progressing to make satellites smaller in size.

157. See Rothblatt, note 74 above, 57 *et. seq.*

158. See note 75 above.

use. The Board then registers the particular use in the name of the notifying party. A later user may use a frequency in the band without causing harmful interference with the use by the prior user. Prior users are however obligated to engage in a technical coordination process, but they cannot be required to modify their system to accommodate the later user.

Developing states which hope to acquire the capability to use the frequencies at a future date claim that this principle of first come, first served, or squatter's right, should yield to a system of allocation or apportionment of the band capacity. Persuasive arguments can indeed be presented in support of each of the two positions.¹⁵⁹ One may not favor the plea that some uses should not be undertaken presently in order to accommodate future possible uses, but agree that there should indeed be a genuine concern for the manner of accommodating future claims to use in accordance with the principle of equitable access for all. The 1985 WARC decided to evolve a new set of procedures to be followed by countries in coordinating their current use of space and the radio spectrum with the proposed use by later claimants, so as to ensure that the latter are equitably accommodated. The decision envisages the setting aside of a small portion of the spectrum for country-by-country apportionment.¹⁶⁰ The new rules will have to be developed and adopted at the 1988 WARC. In the proximate future, until technology develops to provide unlimited scope for expansion of the spectrum, maximum utilization is not to be preferred and some compromise is unavoidable in order to achieve optimal utilization of the resource at any particular time.

Strategies: Direct Television Broadcasting by Satellite

For initiating radio broadcasting via short wave, no previous consent by any state need be granted. Television, however, is a more powerful medium than radio because it concretizes events through visual images. It was perhaps this combined advantage of radio broadcasting with instantaneously produced visual images that led to an apprehension that television might be abused to the disadvantage of the states that did not control the broadcasts. Proposals were put forward to impose a restraint on such broadcasting. In 1972, the Soviet Union presented a draft convention on direct television broadcasting by satellite to the United Nations General Assembly.¹⁶¹ Canada and Sweden presented in 1973 a set of joint draft principles to the working group on Direct Television

159. See Rothblatt, note 74 above, for arguments in favor of "first come, first served." For the opposite view, see D'Arcy, note 104 above.

160. Staple, note 76 above, at p. 700.

161. U.N. Doc.A/8771 (Aug. 9, 1972).

Broadcasting by Satellites set up by the General Assembly's Committee on Peaceful Uses of Outer Space.¹⁶² Earlier, in 1970, France presented to the same working group a "code of good conduct" to govern direct television broadcasting by satellites.¹⁶³ The Soviet draft, in Article 6, required the express consent of the foreign state to permit transmission to its territory before transmission is made; in the absence of such consent, a transmission would be illegal and give rise to international liability. Principle 5 of the Canadian-Swedish proposal also required express consent. The French proposal, by implication, required consent as well, because paragraph 1 specified the duty of states to respect the sovereignty of states that did not wish their territory to receive the broadcast. The United Nations General Assembly, in 1983, adopted a Resolution containing the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting.¹⁶⁴

This Resolution of the General Assembly by implication requires previous consent. For in paragraph 13, it is stated that a state which intends to establish or authorize the establishment of an international direct television broadcasting by satellite service shall without delay notify the proposed receiving state or states of such intention and promptly enter into consultation with any of those states which so requests. According to paragraph 14, an international direct broadcasting by satellite service shall be established only after such consultation and on the basis of agreements or arrangements in conformity with the relevant instruments of the International Telecommunications Union and in accordance with the principles contained in the Resolution.

Under traditional international law it is permissible to communicate with foreign peoples; what is prohibited is intervention in the internal and external affairs of foreign states.¹⁶⁵ The requirement of previous consent with respect to direct television broadcasting by satellite is a new development. To a certain extent the issue is now academic because such broadcasting is now highly vulnerable to disturbance and, as a practical matter, no one would consider broadcasting without the consent of the government of the territory that is scheduled for reception. But it is quite a different thing to accept the principle of previous consent when it is determined to be in opposition to the trend concerning the human right of freedom of information. By the time technology overcomes the vulnerability due to disturbance, all states might acquire a capability to engage in broadcasting for rebuttal of the adverse broad-

162. U.N. Doc. A/AC.105/117, (1973) reproduced from A/AC. 105/WG.3/L.4.

163. U.N. Doc. A/AC.105/83, May 25, 1970.

164. See note 48 above.

165. See below, pp. 130-134.

casts made by opponents. We may therefore recommend that there should not be a hasty conversion of the above principles into treaty prescriptions.

Outcome

It is necessary to note what the Declaration on the Principles of International Law and Cooperation Among States chooses to comment on the topic of "subversive propaganda" or "civil-war mongering."¹⁶⁶ While elaborating the principle of non-intervention, the Declaration states, "no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state." The prohibition is of "incitement" of "subversive, terrorist or armed activities." Treaty provisions in many cases prohibit "incitement" of what are considered to be objectionable acts, as for example, the Broadcasting Convention of 1936 prohibited incitement of the population of any contracting state to acts incompatible with the internal order or security of that state.¹⁶⁷ Another example can be found in the International Convention on the Elimination of all Forms of Racial Discrimination, which requires the parties to declare incitement to racial discrimination as an offence punishable by law.¹⁶⁸ The reference of "incitement" may be understood as not mere suggestion that an act be done or advocacy of it, but activity involving public disseminations which give rise to an expectation that the "proximate outcome" of the activity is the consequence of the behavior of those who responded to the activity in question.¹⁶⁹

The Soviet draft convention on direct television broadcasting by satellite mentioned above, proposed that "broadcasts undermining the foundations of local civilization, culture, way of life, traditions or language," should be regarded as "illegal" and as "incurring international liability of states."¹⁷⁰ The Principles proposed on the same subject by France included a provision that "Broadcasts must respect the

166. The Declaration is cited in note 131 above. For discussion on "subversive propaganda," see below, p. 218.

167. The Convention is cited in chap. 1, note 9, below. The U.S.S.R. became a party to it in 1983. France denounced in 1984 and the United Kingdom in 1985.

168. The Convention was adopted by the U.N. General Assembly by Resolution 2106 (XX), Dec. 21, 1965.

169. See also below, p. 221. Cf. U.S. Supreme Court's formulation on constitutional guarantees of free speech in *Brandenburg v. Ohio*, 341 U.S. 444 (1969): "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action or is likely to incite or produce such action."

170. Cited in note 161 above.

diverse cultures, religions or philosophical doctrines existing in the areas of reception. In particular, programs tending to destroy civilizations, cultures, religions or traditions shall be forbidden.’’¹⁷¹ The General Assembly’s Declaration of Principles on Direct Television Broadcasting by Satellites, however, contains no such provision.¹⁷²

It is to be noted that no culture, tradition, or civilization can be destroyed or undermined by a few broadcasts. Such a thing can happen, if at all, as a result of broadcasts transmitted for the purpose over a period of time. During this period, there will be scope to counteract the effect of such broadcasts by transmissions demonstrating what is good in the particular culture or civilization. It is also a matter to be considered whether the allegedly offending broadcasts add substantially to the flow of communication always present in world community as an incident of community life in the age of highly advanced mass communication. In the light of these concerns and the policy clarification made in the previous section, it seems appropriate that the Declaration of the General Assembly is silent on the matter.

Effects

Proposals for international control of propaganda arose out of the fear that it affects international peace, and there have been proposals to control “war-propaganda” and “civil-war mongering.”¹⁷³ With a view to restraining “aggression” at its incipient stage, and to restrain intense coercion by propaganda, it was proposed that “ideological aggression” should be recognized and prohibited.¹⁷⁴ There have been, as well, proposals and exhortations of a more general character touching on international peace.

Recently, in connection with the discussion on direct television broadcasting by satellites in the United Nations Sub-Committee on the subject, the draft convention presented by the Soviet Union contained a proposal that “broadcasts detrimental to the maintenance of international peace and security” be regarded as “illegal” giving rise to state liability.¹⁷⁵ The Canadian-Swedish draft principles presented in the same context included a principle that direct television broadcasting by satellite “shall be carried out in a manner compatible with the maintenance of international peace and security.”¹⁷⁶ The French Code of Conduct contained a provision, “Any form of propaganda liable to be prejudicial to the maintenance of international peace or to

171. Cited in note 163 above.

172. Cited in note 48 above.

173. For discussion of these, see below, pp. 216, 233.

174. *Ibid.* p. 152.

175. See note 161 above.

176. Cited in note 162 above.

internal peace of states shall be forbidden.”¹⁷⁷ The General Assembly’s Declaration of Principles states that direct television broadcasting activities “should be” carried out in a manner compatible with the development of mutual understanding and the strengthening of friendly relations and cooperation among all states and peoples in the interest of maintaining international peace and security.¹⁷⁸ Statements of this type of general community policy, not containing specific prescriptions, are welcome for the purpose of creating a climate of reduced conflict in the world community.

Since “peace” can be understood in a wide as well as a narrow sense – as a condition in which human demands are satisfied to such an extent that the chances of outbreak of violence are minimal (an optimal public order), and as a condition in which there is merely an absence of violent conflict (minimum public order)¹⁷⁹ – claims are sometimes put forward with the wider meaning of “peace” in view, and these claims suggest that disseminations should not be detrimental to human rights. The Soviet draft convention and the French Code of Ethics mentioned above contain a proposal on such lines.¹⁸⁰ But the Declaration of Principles by the General Assembly on direct television broadcasting by satellite contains no such provision.¹⁸¹ Definition of human rights, including the limitations thereon, requires an elaborate statement, and formal definitions can now be found in several international and regional conventions. Freedom of information is itself a human right and its formulation may be found in different conventions. It does not seem necessary now to formulate the right specifically with respect to direct television broadcasting by satellite.

The claim that measures should be adopted to prevent the publication of false and distorted statements to the detriment of individual states is repeatedly presented. It was put forward in a fairly sophisticated way by Mr. Mustapha Masmoudi of Tunisia during the recent discussions in UNESCO on the New International Information and Communication Order (NIICO). He said that freedom of information should be conceived not merely as the right of the informing

177. Cited in note 163 above.

178. Cited in note 48 above.

179. See pp. 89–90 below.

180. Cited in notes 162 and 164 above. The Soviet draft proposed the banning of “broadcasts involving an encroachment on human rights, on the dignity and worth of the human person and on fundamental freedoms for all without distinction as to race, sex, language or religion.” (Art. VI (2) (a)). The Code of Conduct proposed by France states: “Any attack on the dignity of the individual or on the rights of individuality shall be forbidden. Any propaganda that might be an incitement to violation of the rights of man and the fundamental liberties shall be forbidden.”

181. Cited in note 48 above.

agent but also of the informed. The duties and responsibilities of the communicator ought to receive consideration and definition.¹⁸² However, the complexity of the problem becomes clear when once it is observed that "falsehoods" and "distortions" occur for two reasons, besides the deliberate falsification and distortion by those who employ the ideological instrument. First, the speed with which the operations of mass communication are conducted¹⁸³ and second, the more complex reason, the differing perceptions and interpretations of events by participants which result from factors such as their different traditions and cultural background, their consciousness of their national, group and individual interests, and their language.¹⁸⁴ Any yardstick of "truth" can be, by and large, one person's version of events. If it is desired to avoid giving one person the monopoly to state what is "true", there is no way other than recognizing and implementing the principle of a free and pluralistic forum, not only in a formal but in an effective sense as well. The various competing participants in the world information process should possess the means to communicate their respective versions in a free forum so as to have a reasonable chance of gaining the attention of various audiences. It is difficult also to devise corrective measures to deal with false and distorted statements. The International Convention on the Right of Correction, 1953, which entered into force in 1962,¹⁸⁵ has turned out to be an "academic and largely ineffective instrument."¹⁸⁶

Decision Process: Inclusive Decisions

Notwithstanding the troubles that UNESCO is encountering at present, it can claim to have implemented some policies of inclusive character. In order to bring about a more homogenous world in respect to skills and means of mass communication, it has assisted a number of developing countries in forming national and regional news agencies.¹⁸⁷ The debates on NIICO have caused antagonism with the Western countries. Nevertheless, they have had an indirect influence on the Western news agencies and have moved them towards understanding the developing world's contentions and meeting them, even if only partially.¹⁸⁸ The current economic climate is indeed not favourable for

182. See note 83 above, p. 82.

183. See below, p. 251.

184. See Julius Stone, note 94 above, p. 5.

185. See below, p. 249.

186. This is the observation by the MacBride Commission. See the Commission's Report, note 3 above, p. 249.

187. See MacBride Report, note 3 above, p. 85.

188. See M.H. Anderson, "Emerging Patterns of Global News Cooperation," in Richstad and Anderson, Eds., note 13 above, p. 318. In the collection of essays by

the developed countries to deploy resources liberally towards attaining a world that is less uneven in the matter of means of mass communication.¹⁸⁹ Inclusive programs for achieving an effectively free and pluralistic world forum have the chance of moving forward only very slowly in the present context.

If only tardy support can be obtained for formulating and implementing inclusive policies of a promotional type, the conditions of the world community now are such that far less can be expected in favor of regulatory policies.¹⁹⁰ UNESCO's experience in the 1970's demonstrates this strikingly. In 1970, UNESCO initiated a discussion of the role of the mass media in society to encourage governments to formulate national policies regarding mass communication.¹⁹¹ Means of communication were considered a resource useful for shaping the social and psychological framework within which people lead their lives and strive for achieving the goals of social and economic development. The Director-General of UNESCO was asked at UNESCO's Conference in 1976 at Nairobi to provide a comprehensive review of communication problems. The Director-General formed a committee consisting of 16 members headed by Mr. Sean MacBride. The committee presented a preliminary interim report in 1978 and presented it to the Conference at Paris in 1978. This report generated a great deal of hostility against the organization itself from Western nations, their news and advertising agencies, as the report was seen as authorizing state control over the transnational flow of news and information, and as creating for UNESCO a regulatory role with respect to transnational mass communication processes. The committee presented its final report in 1980,¹⁹² which dropped several statements of the interim

Richstad and Anderson, one finds many academicians and news media scholars conceding that there was some truth in the contentions of the developing countries in the debates on NIICO. Anderson, in his essay on "Emerging Patterns of News Cooperation," mentions that the transnational news agencies have since been giving more attention to Third World issues and concerns.

189. A U.N. Press Release issued after the Second U.N. Conference on Exploration and Peaceful Uses of Outer Space in 1982 (DPI/NG)SG/82/54, Nov. 16, 1982) mentions that the main reason for the poor achievement of the Conference was "we live in a period of greater international tension and economic problems. There is less interest at governmental level in and less money available for international cooperation." L. Sussman, note 66 above, refers to the largely unfulfilled pledge made by the U.S. in UNESCO in 1976 and 1978.

190. Below, p. 275 *et seq.*, we mention the public order decision goals as: prevention, deterrence, restoration, rehabilitation and reconstruction. While that is a more comprehensive classification, here we are employing a simpler classification into "promotional" and "regulatory" categories.

191. See Rosemary Righter, "World Communication Issues," note 86 above, p. 66, for a brief narration of NIICO debates.

192. Cited in note 3 above.

report, strongly condemned censorship, and affirmed the principle of pluralism. It disapproved of concentration of ownership or establishment of monopolies in the press, radio, and television. It specified the responsibilities of journalists who gather information, which is considered in the West as burdensome. The journalists, it was stated, should take care that the reporting promoted friendly relations among nations, fostered their cultural identity, enhanced their dignity, respected their sovereignty, and supported just causes such as disarmament, liberation movements, and racial equality. No journalist outside the totalitarian and authoritarian world accepts any responsibility beyond reporting according to what he considers to be "true" and "newsworthy."¹⁹³ Despite some positive attributes, the report has been met with hostility in the West, especially in the United States and United Kingdom. In addition to speaking of journalists' responsibilities, the report affirmed the Third World contention that the present flow of news is one-sided and there is need for making it balanced.¹⁹⁴

CONCLUSION

The ideological instrument is not simply propaganda, which consists of manipulation of mass communication to influence the attitudes and behaviour of audiences. It includes manipulation of the forum in which the audience receives, transmits and exchanges ideas and information, and the general political, economic and security environment of the audience. In the coercive use of the ideological instrument, the outcome may be high psychological pressure on the audience to adopt a particular attitude or behaviour, and/or a high expectation on the part of the elite which enjoys the loyalty and following of the audience that loss of influence or effective power is imminent.

193. "Newsworthiness" is a matter on which one cannot hope to find a consensus in the present day world. It is not possible to elaborate on this here, but if roughly stated, in the West the emphasis is on satisfaction of the reader's interest, in the East on "responsibility" to contribute to national welfare and progress and to demonstrate the fulfillment of Marxian prophesies, and in the Third World on good image of one's own nation as a progressive one and on developmental efforts to catch up with the developed world. For detailed discussion, see Schramm, note 2 above, p. 159; Rosemary Righter, note 191 above, p. 64; Elie Abel, note 69 above, p. 102; Rosenblum, note 63 above, p. 233; and below p. 79.

194. The Committee stated: "But it is necessary to make a clear distinction between those who aim to restrict freedom of information and those who opposed the present 'free flow' situation in order to achieve more universal freedom of information. A similar distinction must be made between those who defend 'free flow,' but in no way seek to monopolize information flows, and those determined to maintain and extend monopolistic positions and 'status quo' in international communication and use the free flow doctrine to blunt developing countries' criticism." MacBride Report, note 3 above, p. 141.

Recent technological advances – electronics, computers, and satellites – have increased manifold the speed and efficiency of mass communication. Other innovations such as optical cables exist for large-scale use. As the world is unevenly developed in respect to technology, these technological developments enhance the disparity in the capacity of nations to use or manipulate mass communication for strategic or tactical purposes.

While popular belief that communication shapes the attitudes and behavior of people comes from very early times, the social sciences have now progressed enough to affirm that mass communication has such effect. But the advance has not been enough to identify all the independent and dependent variables involved and precisely ascertain their interrelationship. Consequently, it is not possible to predict accurately the outcome and effect of any particular use of the ideological instrument.

Recently advanced claims and counter-claims relating to transnational communication center around two major subjects, direct television broadcasting by satellite and a New International Information and Communication Order. The basic policies we recommend in relation to all claims and counter-claims concerning the ideological instrument are two: First, since the coercive use of the instrument affects the enlightenment of the audience, i.e., the audience is prevented from obtaining a realistic picture of the world and the current flow of events, community policy should be aimed at protecting and promoting the enlightenment value. Second, community policy should be to minimize the incidence of coercion and to regulate the coercive use of the instrument. The first policy should be promoted not by imposition of restriction on communication, but by facilitating the establishment of free and pluralistic forums.

The policy of promoting free and pluralistic forums is recommended also for the reason that a coercive outcome of the use of the instrument is more likely in a closed and authoritarian or totalitarian forum than in a free, democratic and pluralistic forum.

State responsibility provides the procedure by which redress may be obtained in respect to breaches of international prescriptions. A state is responsible for a wrong attributable to it, and is under an obligation to redress it. If the wrongful act, by virtue of the character of the actor, such as a private citizen, is not attributable to the state, the state is bound to exercise due diligence within its jurisdiction to prevent the occurrence of the act. In the event of the violation occurring in spite of the exercise of due diligence, the state is liable to provide redress to the injured party in accordance with generally accepted international standards. The greater the range of state responsibility over a particular activity, the greater the necessity of the state to exercise control over the activity. The implication is that in relation to the ideological instru-

ment, an extension of state responsibility entails increased state control over dissemination by the mass media of communication, and the freedom of information of the individual. The recent claims that, in respect to direct television broadcasting by satellite, the responsible parties should include the state from whose territory the dissemination is made, in addition to the international organization which undertakes the activity and its member states, should be reconsidered in this light. The trend is in favor of accepting such claims and it proceeds from an incomplete analysis and examination of the issues involved.

The trend to limit the concept of aggression to military attack, leaving aside the rare exception which the Security Council might admit, and to regard as impermissible military response to the coercive uses of non-violent instruments is welcome. Another welcome trend is the adherence to the principles of necessity and proportionality in respect to retaliatory response to coercion, whether it be response to armed attack invoking self-defense, or counter-measures in response to coercion short of armed attack, or aggression. If some activity is characterized as ideological aggression, the response to it can only be non-military counter-measures. The clarification that war propaganda is propaganda preparing for a war of aggression is a development in the right direction.

The geostationary orbit-cum-radio spectrum is a limited resource necessary for placing in orbit and operating communication satellites. Policy must aim at optimal use of the resource at any particular time, and provide access on an equitable basis to all those capable and desirous of using the resource. The trend now seems to be rightly in the direction of moving away from the first come, first served principle established in relation to the allocation of radio frequencies, toward a policy designed to secure equitable access.

For whatever reason, presumably the general belief that it is highly dangerous, there is a trend to make direct television broadcasting by satellite to the territory of a state impermissible without the state's consent. The issue is now largely academic, as broadcasts are vulnerable to disturbance by the state to which the transmission is made and no one is likely to start broadcasting without the state's consent or acquiescence. However, it is not right to make consent an essential precondition. It is detrimental to freedom of information. When technology enables us to overcome the disturbances, the requirement of consent may be less significant.

The position regarding exclusive decisions remains unchanged, being subject to the principles of necessity and proportionality concerning the counter-measures adopted.

Inclusive measures are currently demanded on the claim for a New International Information and Communication Order, a claim that the

flow of news and information should be not merely free, but free and balanced. On the part of the Third World, the expectation is not that this new order will be attained by a single stroke. It might be attained by a process of development over time, in technological and other fields, so that the Third World might acquire the capacity to gather, process, and disseminate information by the mass media, more or less on a footing of equality with the developed world. However, the trend is clear that inclusive measures will not be forthcoming, even as short-term measures to attain the balance, if they are in the form of legitimizing restrictions on the flow of information transnationally. The danger which such measures pose to freedom of information is clearly perceived. The trend is also not in favour of inclusive measures in the form of large-scale assistance to the Third World from the developed countries for technological and other development to attain balance. The current international climate in economic and other spheres and the realities of mass communication business practices should discourage the expectation that such measures will be agreed upon. There can be agreement only to the extent that developed countries find some common interest in the development of a New International Information and Communication Order. On the other hand, there is the trend of the formation of cooperative groupings among developing countries, at the global and regional level, to attain the capacity to participate in a significant manner in the world mass communication process.

Inclusive decisions to apply coercive measures to restrain or stop recourse to unauthorized coercion seem unlikely in the present context, either in the international organs at the global level or within regional organizations. The Organization of American States could be an exception, as on occasions the United States may be able to wield predominant influence in it. International organs have become, by and large, bodies which can play only a diplomatic role and apply persuasion and low, non-violent coercion. It is difficult in these organs to find consensus in favor of definitively coercive sanctions. Inclusive persuasive and mildly coercive measures may perhaps suffice to manage the use of the ideological instrument of coercion, if such use is not accompanied by the use of more coercive economic and military instruments. If the ideological instrument of coercion is used to support a coercive economic or military strategy, the focus will then be on the management of the economic or military conflict, rather than the use of the ideological instrument. Even in reference to such situations, international organs generally rely on diplomatic strategies.