which were signatories, but, since 1930, legislation in line with the principles of the Hague Convention, in so far as it related to the nationality of married women, had been passed in the United Kingdom, Canada, Australia, the Irish Free State and New Zealand. It was stated at London that the Union of South Africa contemplated similar legislation. Some Dominions had gone farther than others toward placing the nationality of women on a basis of equality with that of men. By laws of Australia and New Zealand, a woman who, prior to marriage to an alien, was a British subject, could retain within these two Dominions, respectively, political and other rights of a British subject.[16] The Imperial Conference did not find it possible to agree upon any recommendations of change in the existing laws, and the matter was left for further consideration and consultation between the represented governments.

Of the various legal aspects of the evolution of the British Commonwealth of Nations, that concerning treaty-making has been much discussed. Freedom for the Dominions in this matter has usually been regarded as one criterion of autonomy. The Imperial Conference recognized

> (1) That each member takes part in a multilateral treaty as an individual entity, and, in the absence of express provision in the treaty to the contrary, is in no way responsible for the obligations undertaken by any other member; and
>
> (2) That the form agreed upon for such treaties at the Imperial Conference of 1926 accords with this position.[17]

In general, and without restriction to the specific matters selected for comment here, there appears in the work of the Imperial Conference of 1937 further evidence of the continuing process of emergence, out of a formerly unified Empire, of a group of substantially autonomous but closely associated states. There was no more evidence at this, than at previous Conferences, of a desire to restrict this development by rigid legal formulas.

ROBERT R. WILSON

THE USE OF THE RADIO AS AN INSTRUMENT OF FOREIGN PROPAGANDA

The development of radio broadcasting has obviously created new problems of international relations not covered by existing law. In the case of the development of aërial navigation old theories of jurisdiction were forced to give way to practical realities. Whether the air beyond a certain height was free, as the seas beyond the marginal strip were free, might be debated by scholars when the airplane was in its experimental stage. Ten years later, when planes were actually capable of sustained flights, the argument was over. Today we are in the presence of a similar need for the adaptation of customary

[16] Summary of Proceedings, p. 28, and volume referred to in note 10, *supra*, pp. 312–313.

[17] Summary of Proceedings, p. 27. For the 1926 form, see Cmd. 2768 of 1926, pertinent parts of the text of which are in this JOURNAL, Supp., Vol. 21 (1927), pp. 29–32, 37–38.

rules to meet unforeseen conditions; and it is probable that the changes in the traditional law may prove to be quite as far-reaching.

Thirty years or more ago the Institute of International Law told us that "the air is free. States have over it, in time of peace and in time of war, only the rights necessary for their preservation." Whether the principle thus broadly stated still holds, is no more than an academic question. For new conditions have given rise to an interpretation of "the rights necessary to their preservation," which makes them quite as inclusive as rights of dominion itself. Under the head of "self-preservation" may a state protect itself against broadcasts from other states which are believed to be hurtful to it? May it regard such broadcasts, made under governmental auspices, as an attack upon its territory which it is entitled to regard as in the class of military attacks, although less imminent in respect to the danger they present? May self-preservation be extended to justify the use of all possible ways and means to prevent the reception of unfriendly broadcasts? How will it be possible to distinguish between broadcasts intended for home consumption and others intended primarily for foreign propaganda? These are questions that would have had no meaning even in the days when jurisdiction over the air was being debated. Today they have become crucial issues, and the practices which have given rise to them are a source of acute controversy between certain of the leading nations of the international community. It would seem of little consequence which particular theory of jurisdiction over the ether be resorted to in proof of the unlawfulness of "hostile broadcasting." Whether the ether is to be assimilated to the air in relation to territorial jurisdiction and so made a part of the national domain, or whether it is like the sea, *terra nullius* or *terra communis*, but subject to appropriation for particular uses, we are confronted with a definite and concrete situation which calls for prompt regulation. Foreign hostile broadcasts present an immediate danger to the peace; and it is only a question of ways and means of controlling them.

There will be no dispute as to the right of a state under existing international common law to control foreign propaganda coming within its territorial boundaries by other means than radio broadcasts. Whatever might be the wisdom of the policy of a particular state in suppressing freedom of the press in respect to literature and other communications regarded as harmful to the citizen body, the state has had at its disposal means of control through the customs offices of the state and through the administration of the postal service. Obscene literature, for example, has been banned, and it did not take an international convention to justify the exercise of the police power of the state in prohibiting its entrance into the country. The problem of suppression, however, did not, under the rule of customary law, involve action against a foreign government, but merely against individuals acting upon their own responsibility; and as a rule the literature against which the policy of suppression was directed met with no different fate from that met by literature originating within the state itself. There were "isms" of all sorts abroad in

Europe during the nineteenth century; but so long as they were not identified with national governments the propaganda engaged in by their adherents raised no question of international law. Each state applied its restrictions according to its own policies, and with few exceptions it had only itself to blame if it failed to succeed as effectively as it desired.

The problem of hostile governmental propaganda first became an international issue with the establishment of the Soviet Government in Russia. As in the case of the French National Convention in 1792, the Soviet Republic became convinced that it was essential to the success of the revolution in Russia that similar revolutions should be carried out in all capitalist countries. With the Third International as an agency of propaganda the new Republic began its program of "world revolution," and the so-called "capitalist states" proceeded to defend themselves by such suppressive measures within their own territories as they found it feasible to take. When subsequently the Government of the U.S.S.R. sought recognition of its *de jure* character, it was to be expected that pledges would be exacted from it that it would discontinue hostile propaganda. In the exchange of notes which marked the recognition of the U.S.S.R. by the United States in 1933, the Soviet Government pledged itself in general terms to respect the right of the United States to "order its own life within its own jurisdiction in its own way" and to "refrain from interfering" in any manner in the internal affairs of the United States; more specifically, to restrain all persons in its service and all organizations under its direct or indirect control from overt or covert acts tending to disturb the tranquillity or security of the United States, and "in particular" to restrain them from "any agitation or propaganda" having as its aim "the bringing about by force of a change in the political or social order" of the whole or any part of the United States.

It will be remembered that the issue arose in 1935 whether the activities of the Communist International in the U.S.S.R. in "formulating policies to be carried out in the United States by the communist organization in the United States" constituted a violation of the "pledge of non-interference," the Soviet Government asserting that it could not take upon itself "obligations of any kind" with regard to the Communist International, and the United States Department of State insisting that there was no question of supremacy of the authority of the Soviet Government within its territorial limits and of its absolute "power to control" the acts and utterances of organizations and individuals within those limits.

Hostile government propaganda presents issues quite distinct from the familiar problems of abuse of freedom of speech and of the press. For here we have not a group of individuals eager to spread their doctrine to the people of other countries, but states themselves, acting through their public authorities, seeking to accomplish results antagonistic to the policy of the state in which the propaganda is being carried out. The "isms" which formerly had behind them only the personal convictions of their advocates are now identi-

fied with vital national interests. They are no longer theories of a better world put forth by irresponsible individuals, they are official objectives of national policy, to be pursued with the support of the state and to be imposed, if possible, as a means of extending the power of the state which engages in the propaganda.

Wide as is the range of freedom of speech and of the press in the United States, it has always been recognized that there are limitations in the interest of the moral standards of the community, apart from the law of slander and libel. To these limitations there have been added of recent years within a number of the individual States of the Union restrictions upon the advocacy, by word of mouth or in written or printed form, of "criminal anarchy," which in the New York law of 1902 is defined as "the doctrine that organized government should be overthrown by force or violence, or by the assassination of the executive head or of any of the executive officials of government, or by any unlawful means." The judicial interpretation of the statute confines it to words having a present effect of inciting to violence. Academic discussion, historical or philosophical essays, remain outside the law.

The controversy with Russia in 1935 clearly showed that the United States regards an indirect attack upon its political institutions by propaganda supported by a foreign government as controlled by the same principles that govern a direct attack. The only question that arises is of the ways and means by which subversive propaganda originating in a foreign state and supported by its government may be prevented. In the case of pamphlet literature it is, as has been said, merely a question of the length to which a state wishes to go in the suppression of freedom of speech and of the press. The means are at hand for such suppression if the state which is the victim of the propaganda wishes to use them.

Hostile government broadcasting, however, presents new problems. Here we have not only government initiative in the attempt to spread certain principles and policies to the people of other countries, but the use of a technique of dissemination which greatly adds to the difficulty of suppression. By means of powerful stations located within its own territory a state which engages in such propaganda is able to reach persons in far distant countries, and the only practical means of suppression available to the local government is to build a more powerful station which will blot out the hostile broadcast, although at the same time preventing the reception of other local or friendly foreign broadcasts.

There are, of course, degrees in the extent to which such hostile government broadcasting may be worthy of notice by a democracy which has developed its political traditions in an atmosphere of freedom of speech and of the press. The reported broadcasts from the Italian station at Bari, which appear to have been deliberately intended to rouse the native Arab population under British and French rule to rebellion, would seem to constitute a hostile "attack" of a character not to be condoned by any extension of the principle of

freedom of speech. In like manner official broadcasts directed towards a racial minority in a neighboring country with the object of stirring up discontent and intensifying the opposition of the minority towards the government under which they are living would seem to constitute a "hostile attack" upon the neighboring state. At the opposite extreme would be broadcasts which do no more than seek to glorify the accomplishments of the broadcasting government or to promote its trade with neighboring countries. These would normally give rise to no complaint on the part of the state of reception, unless it pursued a policy of far-reaching censorship. But between these extremes there are possibilities, daily becoming realities, of hostile broadcasting which call for regulation in the interest of international peace.

What form might such regulation take, assuming that the method of regulation should be by international convention? The International Radio Convention, signed at the close of the Washington Conference in 1927, dealt only with the transmission of wireless messages as "an international service of public correspondence." A Commission on Radio Commerce was, however, created, the object of which was to study technical questions pertaining to radio communication; and General Regulations were adopted classifying radio emissions and providing for the allocation and use of frequencies and types of emission. No regulations other than those relative to facilities for communication were provided by the Madrid Convention of 1932, which replaced the former International Telegraphic Union with the new International Telecommunication Union. The European Broadcasting Convention, signed at Lucerne in 1933, re-allocated wave-lengths and made provision for the elimination of interference as between the European states parties to the convention. But again no provision was made as to the substance of broadcasts intended primarily for reception in a foreign country.

Under present conditions there would seem to be little possibility of a general self-restraining agreement among the states which engage in hostile broadcasting. Bilateral radio non-aggression pacts may perhaps be worked out between states which can find a political basis for the mutual concessions called for. Failing these, there remains merely the question of what measures of defense a particular state may take to protect itself when the necessity arises. As a matter of domestic legislation it is possible to prohibit the use of selective sets and to require that all radios be built so as to receive only programs transmitted by government stations or by private stations under government license. This, however, would require a degree of supervision and control by the national government which would be out of the question in a democracy and very difficult of enforcement under any but the tightest dictatorship. The "war in the ether" seems destined, therefore, to continue and to lead to reprisals of a political and economic character until such time as a new and more comprehensive agreement of collective security may be developed, within which political, economic, and what has come to be called "moral" disarmament will all form parts of a single system.

C. G. Fenwick