

Summary

The flow of information across national boundaries and State sovereignty

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1. According to the intentions of its protagonists, „peaceful coexistence“ is to be accompanied by an intensification of the *ideological struggle*. As a consequence, the flow of information across frontiers has become the focus of the East-West-conflict, and political considerations have left a thorough mark on its legal regime.

2. During the *classical* period of international law, the obligations of states to prevent hostile activities by private persons against other states were based upon the liberal principle „deeds, not words“. The Anglo-Saxon powers in particular persistently opposed all attempts to go beyond this standard and to adopt a more extensive policy of „mutual insurance“. As a result, the flow of private informations across national boundaries remained virtually unfettered by international legal restraints.

3. The aggressive radio propaganda of the Soviet Union dramatically revealed the vulnerability of national boundaries to the new medium. However, radio broadcasts addressed specifically to foreign audiences did not in themselves meet with protests. In principle, target states kept their countermeasures within their own jurisdiction and limited international reactions to cases in which the contents of broadcasts were considered unacceptable (*freedom of transmission*).

4. After World War II, *freedom of information* regardless of frontiers was, on the initiative of the Western democracies, elevated to an internationally recognized human right. This development presents a dilemma for the East, since marxist-leninist theory of society as well as the imperatives of power demand exclusive control of information by party and

state. Thus, the East regards Western mass media and international broadcasts in particular as a permanent threat, and consequently attacks them with international legal arguments.

5. A comprehensive international legal prohibition of *propaganda* as alleged by the East is at variance with the Western doctrine, particularly regarding private propaganda. Owing to its commitment to press freedom and the danger of political abuse, the West has opposed the formulation of an international obligation even regarding the prevention of private propaganda for war. From this point of view, Western acceptance of treaty provisions like Article 4 of the Convention on the Elimination of Racial Discrimination and Article 20, paras. 1 and 2, of the Covenant on Civil and Political Rights forms an exception from the rule which might turn out to be dangerous.

6. The disagreement is even more fundamental with regard to the question whether the allegedly subversive propaganda emanating from the Western mass media, in particular the Munich stations „Radio Free Europe“ and „Radio Liberty“, constitutes a violation of the international legal principle of *non-intervention*. According to the Western view, „responsibility“ of states for the media as generally contended by the East presupposes either the imputability of these activities to the state or the latter's non-performance of a duty of prevention. With regard to those media which are in effect independent from the state, both these tests lead to negative results.

7. Formerly, *jamming* of foreign broadcasts within the domestic sphere was admissible without any limitations as a compensation for the freedom of transmission recognized by customary international law. Today, however, parties of human rights conventions embodying freedom of information may lawfully resort to jamming only within the limits which these conventions themselves draw.

8. At present, the tension between State sovereignty and freedom of information is culminating in the controversy about an international legal regime for *direct satellite broadcasting*. As a consequence of the new technique's unrivalled manipulative potential and of the fact that its application will more or less be a one-way-street, „prior consent“ is here being called for by the greater part even of those states which otherwise en-

dorse freedom of information (in the Western sense) – which ought to serve as a warning against straining this concept. Besides, the Final Acts of the 1977 World Administrative Radio Conference of ITU have already prejudged reality according to the principle of national supply.

9. The international legal implications of *Remote Sensing* bear a certain resemblance to the problems connected with espionage from satellites. In the defensive arguments of the developing countries, a new facet of sovereignty over natural resources seems to be appearing in the shape of „information sovereignty“.

10. The UNESCO debate on a *New World Information Order* has hardly added any new viewpoints on the conflict between freedom of information and State sovereignty. Instead, it is merely varying the issues that have arisen in the course of the East-West information controversy. The Third World's foremost demand to attain a balanced flow of information between North and South can be met while nevertheless fully respecting the human right of freedom of information.