AN INTERNATIONAL RIGHT OF REPLY

Current campaigns of mutual vilification conducted by nations through platform, press and radio present a spectacle without precedent in peacetime history. In spite of time-honored traditions of extreme courtesy and strict conformance with the rules of the protocol, present-day diplomats indulge in mutual recriminations of a virulent character, so that even in the United Nations the defamation of persons in high places or the states they represent are of frequent occurrence. The consequences to the cause of mutual understanding and peace are not good.

In an effort to remedy this situation, two proposals have figured prominently in recent discussions. One, championed mainly by the United States and Britain, is based on the assumption that the best way to overcome the dangers caused by the publication of false reports, incendiary preachings or war-mongering messages is to assure to the public more and freer sources of information, so that it may judge for itself of the validity of the conflicting views.[1] The other remedy, proposed by Soviet Russia and its satellites, eschews any real freedom of information, but would meet the dangers of propaganda by more drastic methods, notably through an obligation on the part of each state to curb objectionable publications and to punish the offenders through criminal procedures.[2] This plan is opposed by the Western democracies on the ground that it would legalize peacetime censorship, whch all free states abhor, and would open the door to totalitarian controls over all media of information.[3]

In addition to the two remedies just mentioned, a third has been proposed, and was approved by the General Assembly last spring without attracting much attention among students of international law and organization. This is the international right of reply set forth in the Convention on the International Transmission of News and the Right of Correction, approved on May 14, 1949, by the General Assembly.[4] The plan was originally proposed by France at the Geneva Conference on Freedom of Information and of the Press in 1948, and was there approved as the so-called "French Convention."[5]

The idea of a right of reply available to persons claiming to be injured by defamatory publications is not new. Like most schemes for the regu-

[1] U. N. Conference on Freedom of Information, Report of the U. S. Delegates with Related Documents (Department of State Pub. 3150, Int. Org. and Conf. Ser. III, 5), pp. 2 ff.; John B. Whitton, "The United Nations Conference on Freedom of Information and the Movement against International Propaganda," this JOURNAL, Vol. 43 (1949), p. 73.

[2] U. N. Docs. E/856; E/Conf.6/C.4/18.

[3] *Supra*, note 1, Report of U. S. Delegates, p. 3.

[4] United Nations Bulletin, June 1, 1949, p. 592; General Assembly, 3rd Sess., Part II, Official Records, April 5–May 18, 1949, pp. 21 ff.

[5] *Supra*, note 1, pp. 9 and 18; Whitton, *loc. cit.*

lation of relations between states, it was borrowed from domestic legislation, above all from the French laws, the first of which appeared in 1819.[6] Anyone named specifically in a publication is entitled to demand the insertion of a reply, of a specified character and length, in the same organ. This right of reply is open even to the author of a book or play who objects to a published critique. Of course, there is no guarantee of truth through this procedure, but the public is enabled to judge of the veracity and soundness of the opposing views. This law is still in force.[7] Recently the French courts refused to extend the right of reply to statements made by radio broadcast.[8]

Since the right of reply offers a remedy much more prompt, less costly and less difficult to obtain than the usual action for libel, it is not surprising that the example of France has been followed in approximaely 30 countries.[9] But Britain and the United States in general still cling to the older remedy of an action for libel, despite its admitted weaknesses and defects.[10] The 30 countries mentioned have adopted either (1) the French type of right of reply; (2) a compulsory retraction—the enforced publication in the organ in which the objectionable article appeared of a revised version of the facts; or (3) some combination of the two.[11] In the United States only one State—Nevada—has adopted the continental formula for a right of reply, and it is reported that this law is working satisfactorily.[12] Only twenty American States have passed statutes, whose

[6] Law of June 9, 1819. The principal French statutes covering the right of reply are: Law of March 25, 1822; Law of July 29, 1881, and Law of Sept. 29, 1919.

[7] Andre Perraud, *Le Droit de Réponse* (Paris, 1930); Barbier, *Code Expliqué de la Presse* (2d ed., Paris, 1911), Vol. I; Berraud-Charmantier, *Le Droit de Réponse* (Paris, 1930); Albert Exhenry, *Le Droit de Réponse en matière de presse dans les législations d'Europe* (Thesis, Lausanne, 1929).

[8] Tribunal correctionnel de la Seine, 12e chambre, Feb. 1, 1929, reported in *Revue Juridique Internationale de Radioélectricité*, 5th year (1929), p. 57; affirmed on appeal in Court of Appeals, Paris, Nov. 27, 1929, *ibid.*, 6th year (1930), p. 36.

[9] Exhenry, *op. cit.;* Zechariah Chafee, Jr., "Possible New Remedies for Errors in the Press," Harvard Law Review, Vol. LX (Nov., 1946), pp. 1 ff.; Richard C. Donnelly, "The Right of Reply: An Alternative to an Action for Libel," Virginia Law Review, Vol. 34 (Nov., 1948), pp. 867 ff.

[10] Chafee says of the libel action: "The crude Anglo-Saxon notion of vindicating honor by getting cash has become unsatisfactory to many decent people. They want a less sordid and more convenient procedure, which will focus its attention on what most concerns them, the mistakes in the defendant's statement. It would be desirable for a court to be able to do something tangible to reduce the injurious effect of those mistakes, without having to bother about any of the hard-fought questions of damages which now take up so much time in a libel suit." *Loc. cit.*, p. 7. "A successful libel suit is, at best, almost as unusual as a successful action to break a will. It is the rare exception." Donnelly, *loc. cit.*, p. 874.

[11] Chafee, Donnelly and Exhenry, *loc. cit.* Also, Ignace Rothenberg, "The Right of Reply to Libels in the Press," Journal of Comparative Legislation and International Law, 3d series, Vol. XXIII, Pt. I (February, 1941), pp. 38 ff.

[12] Donnelly, *loc. cit.*, p. 892. Text in Nevada Comp. Laws (Hillyer, 1929), sec. 10506.

origin can be traced to the English Libel Act of 1843, providing for optional retraction; a newspaper which publishes a full apology or prints a retraction may claim mitigation of damages.[13]

The movement for the establishment of an international right of reply was initiated about twenty years ago, when the problem of international propaganda first became acute. One of the earliest of such proposals was made in 1929, when the International Juridical Congress on Radio adopted a *voeu* favoring the extension to broadcasting of the right of reply already existing, as already mentioned, in certain national legislation.[14] In 1931 the International Federation of League of Nations Societies recommended the establishment of a right of reply on behalf of any state objecting to a report, by press or radio, that was inexact or was calculated to disturb international relations.[15] A similar plan was urged by the International Federation of Journalists at a conference held in Brussels in 1934.[16]

The main object of the United Nations plan for an international right of correction is to give states aggrieved by false or distorted reports likely to injure friendly relations an opportunity to secure commensurate publicity for their own publications. It is hoped thereby to prevent the publication of such reports, or at least to attenuate their effects.[17] In order to bring the right into operation, the following conditions must be present: (1) a news dispatch transmitted from one country to another by correspondents or information agencies; (2) its publication abroad; (3) a claim by the demanding state that the dispatch is "capable of injuring its relations with other states or its national prestige or dignity"; and (4) a similar claim that the dispatch is "false and distorted."[18]

If these conditions are fulfilled, the complainant state may submit "its own version of the facts" (the *communiqué*) to the contracting states within whose territories such dispatch has been published or disseminated. A copy is also forwarded to the correspondent or information agency concerned, so that the latter *may* (there is no duty to do so) correct the original statement. Within five days the defendant state must release the *communiqué* to the appropriate correspondents and information agencies, and also transmit it to the headquarters of the information agency whose correspondent was responsible for originating the dispatch, if such head-

[13] Lord Campbell's Libel Act of 1843, 6 and 7 Vict., c. 96, Secs. 1, 2 (1843); American statutes cited and discussed by Chafee, *loc. cit.*, p. 18, Donnelly, *loc. cit.*, p. 892; Arthur and Crosman, The Law of Newspapers (2d ed., 1949), pp. 240 ff., and Appendix C, where the statutes are collected.

[14] Lapie, *"Droit de réponse et radiophonie," Revue Juridique International de Radioélectricité*, 5th year (1929), p. 16.

[15] League of Nations Doc. C. 602.M.240.1931.IX.Disarmament 1931.IX,19, p. 4.

[16] League of Nations Bulletin of Information on the Work of International Organizations, VII, pp. 50–51.

[17] Convention on the International Transmission of News and the Right of Correction, preamble. *Supra*, note 4.

[18] Article 9.

quarters are within its territory.[19] None of these agencies, however, is under any duty to publish the reply.

In case the defendant state fails to carry out the obligations just described, the complaining state may submit the *communiqué* to the Secretary General of the United Nations, simultaneously notifying the defendant state, which may also submit its comments to the Secretary General. The latter, within 10 days, must "give appropriate publicity through the information channels at his disposal" not only to the reply, but also to the original dispatch and any comments submitted by the defendant state.[20]

This plan for an international right of correction, if adopted, should make a valuable contribution towards the attainment of higher standards of international news communication. But it offers no panacea. It is noteworthy that, unlike its national counterpart, it is supported by no provisions for judicial control. Furthermore, its operation is almost completely optional; the only sanctions for non-conformance are extremely weak.[21] In fact, its non-compulsory nature has been lauded by some of its chief proponents as one of its best features,[22] although some of the delegates to the United Nations attacked the plan as too cautious and too modest.[23] It does not seem probable that the establishment of such a right could do much to halt campaigns of subversion and hatred inspired by aggressive states and executed by a controlled press and radio. States of this character, in fact, would be the last to adhere to the treaty upon which the right is based. Even if they did ratify the treaty, it would probably be for the very purpose of using the right of correction to answer the legitimate protests of other states against their aggressive policies. In other words, they would use the right simply as one more means of spreading propaganda.[24]

On the other hand, to the community of free democratic states the right

[19] Article 10. [20] Article 11.

[21] If a contracting state fails to discharge its obligations with respect to the *communiqué*, the complaining state is permitted to give similar treatment to a *communiqué* later submitted to it by the defaulting state. A weaker sanction could hardly be imagined. True, a failure on the part of the defendant state to *submit* the *communiqué* brings into operation the important provision for action through the Secretary General, but apparently this action is not authorized if the government of the defendant submits the *communiqué* and the news dissemination agencies fail to print it. For by the mere submission the defendant state will have fulfilled its obligations under Art. 10.

[22] See speech of Mr. Canham, United States Representative, in the General Assembly May 13, 1949. U. N. Doc. A/P.V.210, May 13, 1949.

[23] Mr. Azkoul (Lebanon), found the scheme overcautious, and Mr. Kahali (Syria) called it a "mere mail-box function," with inadequate sanctions for non-performance. U. N. Doc. A/P.V.211, May 13, 1949.

[24] Mr. Canham remarked that the Nazi Government before 1939, in answer to reporting of its evil doings by foreign newspapers, would undoubtedly have used its right of correction to flood foreign offices of the democracies with alleged corrections. *Supra*, note 22.

of correction should prove to be of real benefit. It offers a practical means of conciliating the imperative need of states in their mutual relations for reliable, non-subversive, non-incendiary news, with the democratic principle of freedom of information. More than once states have protested against hostile articles appearing in the press of a foreign state, only to be met by the response that the defendant government was powerless to intervene because of constitutional guarantees of freedom of the press.[25] With the right of correction in operation, this excuse could no longer be invoked, and both governments concerned, in their own interest, should welcome the chance to invoke this new remedy. Looking to American experience alone, the anti-Spanish campaigns in certain newspapers at the turn of the century, and the anti-British attacks in the same or similar organs between the two world wars, might have been checkmated if, in both cases, the aggrieved state had been able to make an official reply through accepted, highly authoritative channels.

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"TREATY-MERCHANT" CLAUSES IN COMMERCIAL TREATIES OF THE UNITED STATES

It is commonplace to say that customary international law imposes no legal duty upon any state to permit aliens to enter and reside in its territory.[1] That there will be, however, in the case of every member of the family of nations, some admission of aliens, may be taken for granted, although in the case of certain totalitarian states the entry of persons, at least those of particular nationalities, may be strictly curtailed. As is well known, numerous bilateral treaties provide, either in specific terms or through the operation of most-favored-nation clauses, for entry that is not given as a matter of obligation under customary law. The treaties make possible a wide variety of arrangements for admission, usually on a basis of mutuality, of natural persons who may acquire thereby a status less definitive than that afforded to full-fledged immigrants but more permanent than that enjoyed by temporary visitors whose visas are valid for a relatively short time.

The United States has provided such a basis for "treaty traders" or "treaty merchants" under Section 3(6) of the Immigration Act of 1924, as amended.[2] At a time when the United States is leading in an effort for the promotion of international trade and for its facilitation through reasonable freedom of international movement for persons engaging in it, the provisions of this legislation may merit special examination. For

[25] British answer to protests from Napoleon, Annual Register, Vol. 45 (1803), p. 665. For response of U. S. Government to protests by Mexico against hostile propaganda in this country, see Hackworth, Digest, Vol. II, p. 142.

[1] See, for example, C. C. Hyde, International Law Chiefly as Interpreted and Applied by the United States (1945 ed.), Vol. I, pp. 216–217.

[2] 8 U. S. C. (1948), Sec. 203. See wording as reproduced in note 10, *infra*.