

JAMMING THE STATIONS: IS THERE AN INTERNATIONAL FREE FLOW OF INFORMATION?

In September 1983, Korean Airlines flight 7 was shot down by a Soviet interceptor.¹ All 269 passengers perished.² Within an hour, news of the incident was broadcast to citizens of the Eastern European countries and the Soviet Union³ over Radio Free Europe (RFE)⁴ and Radio Liberty (RL).⁵ The Soviet news services, however, failed to mention the incident.⁶ The Soviet government deliberately attempted to block reception of the RFE and RL broadcast through radio jamming.⁷

Radio jamming is a significant international problem because radio broadcasting is an essential and powerful means of disseminating information among nations.⁸ Radio jamming is generally defined as "deliberate radio interference to prevent reception of a foreign broadcast."⁹ A more technical definition is "intentional harmful interference"¹⁰ which results in intentional non-conformity

1. THE BOARD FOR INTERNATIONAL BROADCASTING, TENTH ANNUAL REPORT 11 (1984) [hereinafter cited as TENTH ANNUAL REPORT].

2. *Id.*

3. *Id.*

4. See *infra* note 35 and accompanying text.

5. See *infra* note 36 and accompanying text.

6. TENTH ANNUAL REPORT, *supra* note 1, at 11. The Soviet Union at first denied that the plane was shot down. When the Soviet news services later admitted it had in fact been shot down by one of their pilots, they claimed the Korean plane had no lights identifying it as non-aggressive. However, RFE and RL broadcasts of the tapes of the interceptor's pilot revealed that he claimed he could see the Korean jet's strobe lights.

7. *Id.*

8. Radio has proven to be one of the most important sources of communication since its invention. It has also proven to be one of the most dynamic. For example, on October 30, 1938, approximately twelve million panic stricken Americans listened to a radio station announcing a Martian invasion. Most of those listeners did not realize this radio program was H.G. Wells' play "War of the Worlds," despite the fact that the Columbia Broadcasting System had announced that the subject matter was fiction four times throughout the program. For an excellent account of the broadcast and the reaction to it see H. CANTRIL, THE INVASION FROM MARS 43, 56 (1952).

9. Comment, *Radio Propaganda in the Contexts of International Regulation and the Free Flow of Information as a Human Right*, 5 BROOKLYN J. INT'L L. 154, 163 (1979) [hereinafter cited as *Radio Propaganda*].

10. D. LEIVE, INTERNATIONAL TELECOMMUNICATIONS AND INTERNATIONAL LAW: THE REGULATION OF THE RADIO SPECTRUM 356 (1970). Harmful interference is defined as "any emission, radiation or induction which endangers the functioning of a radio navigation

with the Radio Regulations.¹¹ Thus, intentional interference of a radio broadcast often prevents crucial information from reaching the appropriate target audiences,¹² and generally inhibits the free flow of information. The concern over radio jamming is so great that it was the topic of discussion at the Belgrade Conference in 1977.¹³

The Soviet Union's attempt to jam the RFE and RL broadcasts of the Korean Airlines incident clearly demonstrates that many nations have widely different views on what kind of information may be received by their citizens. Although many nations view RFE and RL broadcasts as straightforward, unbiased and accurate news coverage, many other nations view such broadcasts as intentional attempts to invade their sovereign right to control the information which their citizens receive. Thus, nations such as the Soviet Union constantly attempt to jam radio signals from foreign stations such as RFE and RL.

Nations that use radio jamming insist that the technique is the only way to prevent unwanted foreign broadcasts, such as those which contain "propaganda"¹⁴ from reaching their citizens.¹⁵ These nations insist that radio jamming is justified because they are

service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radio communication service operating in accordance with these Radio Regulations." Radio Regulations, Dec. 21, 1959, art. 1, para. 93, 12 U.S.T. 2377, T.I.A.S. No. 4893 (hereinafter cited as Radio Regulations).

11. *Id.* The Radio Regulations are annexed to the International Telecommunications Convention. International Telecommunications Convention, Oct. 25, 1973, 28 U.S.T. 2497, T.I.A.S. No. 8572 [hereinafter cited as ITC]; The Treaty was signed by 157 countries as of August 1982; see *infra* notes 123-41 and accompanying text. The Convention is a multilateral treaty governing the regulation of international telecommunication.

12. For example, Cuba has had a history of interference with American broadcasting throughout the United States, particularly in Florida. More recently, on August 31, 1982, Cuba jammed five United States commercial radio stations. Among those stations jammed was WHO, a major station in Des Moines, Iowa, responsible for providing "local farmers with early morning farm news and weather reports" which were crucial to the farmers in the midwest United States. N.Y. Times, Sept. 1, 1982, at A12, col. 1 The Voice of Cuba interrupted United States radio stations with broadcasts that "included news programs with a heavily ideological tint." N.Y. Times, Sept. 3, 1982, at B6, col. 1; N.Y. Times, Sept. 10, 1982, at A12, col. 1. See also 128 CONG. REC. H5562 (daily ed. Aug. 10, 1982) (statement of Florida Congressman Mica about Fidel Castro's history of jamming United States radio stations). Cuba has interfered with U.S. radio stations for the past fifteen years. H.R. REP. No. 284, part 2, 98th Cong., 1st Sess. 19 (1983).

13. Goldberg, *Human Rights and the Belgrade Meeting*, 13 VAND. J. TRANSNAT'L L. 317, 319 (1980). This was the Conference on Security and Cooperation in Europe. The meeting began Oct. 4, 1977 and ended March 9, 1978. The purpose of the meeting was to carry out the diplomacy of the Helsinki Accords.

14. See *infra* text accompanying note 28.

15. *Radio Propaganda*, *supra* note 9, at 156.

protecting their sovereignty by preventing unwanted foreign broadcast from reaching their territories.¹⁶ In addition, these nations often contend that jamming is legal where broadcasts violate the "spirit and letter of the Helsinki Accord."¹⁷

In response, many other nations argue that radio jamming violates international law. These nations point out that radio jamming is not only regulated under the Radio Regulations,¹⁸ but prohibited entirely under Article 35 of the International Telecommunications Convention (ITC).¹⁹ In addition, these nations also argue that jamming violates the free flow of information as set out in Article 19 of the Universal Declaration of Human Rights.²⁰

The ITC and the Radio Regulations, however, have been ineffective because neither provide effective sanctions against nations which jam radio signals.²¹ Moreover, the Universal Declaration fails to adequately define the scope of the right of freedom of information.²² As a result, radio jamming continues unabated, creating international discord, exacerbating existing tensions and contributing to the deterioration of *ordre public*.²³

This Comment will first discuss the reasons why nations jam foreign broadcasts. Specific instances of radio jamming against RFE and RL will be used to illustrate these reasons. The Comment will also examine both the argument that jamming is justified under the theory of territorial sovereignty, and the arguments that jamming violates international law. Specific attention is given to Article 35 of the Radio Regulations, the ITC and Article 19 of the Universal Declaration of Human Rights. While this section concludes that radio jamming violates international law, it will also contend that the current law is both inadequate and unrealistic. Fi-

16. See *infra* notes 48-62 and accompanying text.

17. *Radio Propaganda*, *supra* note 9, at 168. See *infra* notes 83-96 and accompanying text.

18. Radio Regulations, *supra* note 10.

19. ITC, *supra* note 11.

20. See *infra* text accompanying notes 67-82.

21. See *infra* text accompanying notes 145-48.

22. See *infra* text accompanying notes 69-82 and 104-22.

23. *Ordre Public* may be defined generally as a "minimal sense of community control and prevention of private violence." M. McDUGAL & P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION* 121 (1961). The authors state:

"The Securing of a Public Order—understood in a broader sense as embracing the totality of a community's legally protected goal values and implementing institutions—which *seeks*, beyond an effective community monopolization of force, the richest production and widest sharing of all values, is today commonly projected as appropriate aspiration [sic] by most mature territorial policies." *Id.* at 121-122.

nally, a solution is proposed that initially focuses on amending the ITC to include provisions restricting broadcast content. Additionally, an adequate definition of the free flow of information is proposed, as is the suggested adoption of bilateral treaties to provide specific restrictions for broadcast which can be adjusted for each nation.

I. THE REASON JAMMING OCCURS

Many nations in the world have at various times experienced the jamming of their radio stations. Radio jamming may be either intentional or unintentional. Resolution of most unintentional interference disputes is largely a matter of cooperation between the two stations.²⁴ Resolution of intentional jamming disputes, however, occurs infrequently.²⁵ In such instances, the dispute settlement often fails because the radio station of one nation refuses to admit that it was intentionally broadcasting over the foreign station's frequency.²⁶ Moreover, in the large majority of cases, the jamming nation never submits to arbitration because the harmful interference was intentional.

The major reason intentional harmful interference occurs is to prevent the broadcasting of propaganda by a foreign nation.²⁷

24. See *infra* text accompanying note 147.

25. See D. LEIVE, *supra* note 10, at 132. In 1957, the United States was accused of jamming a Soviet radio station. The United States claimed the Soviet Union was interfering with a frequency that the United States had been assigned in 1953. The Soviet Union claimed priority to the frequency, arguing that they had used it since 1933. Although the dispute was brought before the International Frequency Registration Board it never resolved the case due to "political factors underlying the dispute." *Id.*

26. Comment, *The Role of the International Telecommunication Union in the Settlement of Harmful Interference Disputes*, 13 COLUM. J. TRANSNAT'L L. 82, 89 (1974) [hereinafter cited as *The Role of the ITU*].

27. Propaganda provides the major reason for States to jam foreign broadcasts. Another major reason the technique is used to block the transmission of so-called "pirate broadcasts." See Smith, *Pirate Broadcasting*, 41 S. CAL. L. REV. 769 (1968); Comment, *Controlling "Pirate" Broadcasting*, 15 SAN DIEGO L. REV. 547, 550 (1978).

Harmful interference first arose in the 1930's when "pirate stations" began broadcasting without authorization in their own or other nations. Pirate stations are radio stations which are usually based on ships anchored outside their broadcast territory. These stations seek to escape domestic restrictions on the programs they wish to broadcast. D. LEIVE, *supra* note 10, at 132. Three legal problems arise in association with pirate broadcasting. First, these stations are not allocated a frequency within a given nation and have not been granted authority to broadcast. Second, pirate stations do not pay appropriate royalties and copyright fees required for broadcasting. Finally, the pirate broadcasters violate the Radio Regulations which explicitly prohibit broadcasting into a nation from outside its national territory. See van Panhuys & van Ende Boas, *Legal Aspects of Pirate Broadcasting*, 60 AM. J. INT'L L. 303, 307, 308 (1966); H. Robertson, Jr., *The Suppression of Pirate Radio Broadcasting: A Test Case*

Propaganda is defined as "the deliberate attempt by some individual or group to form, control or alter the attitudes of other groups by the use of instruments of communication, and with the intention that in any given situation the reaction of those so influenced will be that of the propagandist."²⁸ Propaganda may be in the form of political, educational, economic or entertainment broadcasts.

Propaganda in foreign broadcasts usually fits into one of the following four categories: (1) subversive propaganda, (2) defamatory propaganda, (3) propaganda for war, or (4) private propaganda.²⁹ Subversive propaganda is most frequently used, and focuses on encouraging the people of a foreign nation to actively change their present form of government.³⁰ Defamatory propaganda consists of representations by statements which "insult" a foreign nation.³¹ War propaganda, also called "warmongering," is very similar to subversive propaganda as it persuades listeners to overthrow their nation by armed insurgency.³² Private propaganda is disseminated by radio chains or private individuals who are not under any governmental control, and poses a threat to international peace because the receiving nation may interpret the propaganda to be State activated.³³

of the International System for Control of Activities Outside National Territory, 45 LAW & CONTEMP. PROBS. 71, 72, 75, 76 (1982). Article 7, section 1 of the Radio Regulations provides that "The establishment and use of broadcasting stations (sound broadcasting and television broadcasting stations) on board ships, aircraft or any other floating or airborne objects outside national territories is prohibited."

28. T. QUALTER, PROPAGANDA AND PSYCHOLOGICAL WARFARE 27 (1962), *as cited in Radio Propaganda*, *supra* note 9 at 156. R. LINDAHL, BROADCASTING ACROSS BORDERS 35, 37 (1978).

29. NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATION 218, 221, 224, 226 (K. Nordenstreng & H. Schiller eds. 1979).

30. *Id.* at 218, 219.

31. *Id.* at 221. An example of defamatory propaganda may be seen in the following statement: "In 1787, Lord Gordon was convicted in England of defaming Marie Antoinette . . ." *Id.* at 222. More recently accounts of defamatory propaganda have occurred between the People's Republic of China and the Soviet Union, and between the Arab nations. *Id.* at 223.

32. *Id.* at 224. An example of war propaganda may be seen in a New York Times article dated January 4, 1954. The article stated that King Saud made the following statement: "Israel to the Arab world is like a cancer to the human body and the only remedy is to uproot it just like a cancer." *Id.* A different form of "war propaganda" is exemplified by the "Tokyo Rose" broadcasts which came from Japan during World War II. Those broadcasts spread fear and despair throughout the American troops in the Pacific during the early part of World War II. With every move the American forces made, rumors abounded that Tokyo Rose knew of their position. One correspondent claimed that the people who spread the rumors never actually heard the broadcasts. *See generally* R. GUNN, THEY CALLED HER TOKYO ROSE 3-4 (1977).

33. NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATION *supra* note 29, at

The enforcement of regulations against the use of radio jamming is difficult. Nations therefore resort to jamming with impunity as a self-help remedy in order to prevent the spread of propaganda to their citizens. In addition, many nations employ the use of intentional harmful interference as a retaliatory tactic against stations which are transmitting propaganda.³⁴

Not all foreign broadcasts, however, intentionally disseminate propaganda. In fact, RFE³⁵ and RL³⁶ have strict policy guidelines to avoid disseminating information of such content.³⁷ Both RFE

226-221. The American Press' support for the Irish rebellion is an example of private propaganda. *Id.* at 226.

34. In this regard, the increase in Cuban radio jamming is probably a direct result of American passage of the Radio Broadcasting to Cuba Act of 1983. *See generally*, S. 602, 98th Cong., 1st Sess. (1983) [hereinafter cited as Senate Bill 602]; *see also*, House Record of the Radio Broadcasting to Cuba Act, H.R. 2453, 98th Cong., 1st Sess. (1983). The purpose of the Radio Broadcasting to Cuba Act is to create increased broadcasting to Cuba, focusing on the "open communication of accurate information and ideas to the people of Cuba, in particular information on or about Cuba . . ." 41 CONG. Q. WKLY. REP. (Sept. 17, 1983). The problem, however, is that regardless of whether the broadcasts go out over a short wave frequency or an AM or FM frequency, increased Cuban broadcasting may create a radio war. This possibility is made more probable in light of the fact that the Cuban radio jamming in August 1982 was in direct retaliation to the Radio Broadcasting to Cuba Act. In addition, the Cuban government has continued to threaten to jam Radio Marti, (the proposed new station) which is on a 500 kilowatt transmitter. Should Cuba interfere with the 500 kilowatt transmitter, over 200 U.S. radio stations could be interrupted. H.R. REP. No. 284, part 1, 98th Cong., 1st Sess. 7 (1983).

35. In 1950 Radio Free Europe (RFE) was created and sent its first broadcast over the air. The National Committee for a Free Europe, Inc. (later to be called a Free Europe, Inc.) created RFE. By the end of its first year RFE was broadcasting to Romania, Poland, Czechoslovakia, Hungary, and Bulgaria. RFE and RL now also broadcast into the Soviet Union and the Eastern European countries from their Munich station. THE BOARD FOR INTERNATIONAL BROADCASTING, NINTH ANNUAL REPORT (1983) [hereinafter cited as NINTH ANNUAL REPORT]; *The Right to Know: Report of the Presidential Study Commission on International Radio Broadcasting* 70, 73 (1973) [hereinafter cited as *The Right to Know*]; INTERNATIONAL NEWS: FREEDOM UNDER ATTACK 44 (D. Fascell ed. 1979) [hereinafter cited as INTERNATIONAL NEWS].

36. *The Right to Know*, *supra* note 35, at 26. Radio Liberty (RL) (originally named Radio Liberation) was created in 1951 under the auspices of "American Committee for Freedom of the Peoples of the USSR, Inc." RL only broadcasts to the Soviet Union. Both RFE and RL were controlled and created as private organizations. *Id.*

In 1973, due to the United States government's interest in retaining some control over RFE and RL, the act creating the Board for International Broadcasting (BIB) was passed. As a result, the BIB became an "independent public body to oversee the operation" of RFE and RL. Today RFE and RL remain independent radio stations under the auspices of the BIB. According to the Code of Federal Regulations, the BIB is to manage RFE and RL as "independent broadcast media with professional independence." 22 C.F.R. 1300 (1981).

37. *But see* B. PAULU, BROADCASTING IN EASTERN EUROPE 212 (1974). Paulu describes how the stations had connections with the Central Intelligence Agency. P. AGEE, INSIDE THE COMPANY: CIA DIARY 65 (1975). Agee states that "Radio Free Europe (RFE) and Radio Liberty (RL) are the best known grey-propaganda operations conducted by the CIA against

and RL follow the Universal Declaration of Human Rights, which provides that all people have a right to freedom of information.³⁸ The declared mission of RFE and RL is to broadcast information and programs to Eastern Europe and the Soviet Union. These stations attempt to identify with the interests of their audiences,³⁹ broadcasting information about domestic concerns of the Eastern European nations and the Soviet Union, along with information about world events. Much of the RFE and RL broadcasts disseminate information which citizens of these nations do not receive from their own stations, due to their heavily censored media.⁴⁰

RFE and RL also try to prevent their broadcasts from being critical of the nations receiving their programs. Since the overall goal of these radio stations is to inform citizens of Eastern Europe and the Soviet Union about the "truth," accuracy and objectivity are important factors in producing programs.⁴¹ The rationale underlying RFE and RL broadcasts is that accurate news will result in informed public opinion which will enhance world peace.⁴²

The restraints to which RFE and RL adhere prohibit broadcasting content which could be adverse to the politics of the Soviet Union or the Eastern European nations.⁴³ RFE and RL are not

the Soviet Bloc." *Id.* Agee defines "grey-propaganda" as propaganda attributed to organizations" who do not acknowledge the U.S. government as the source of their material and who produce the material as if it were their own." *Id.* at 63.

38. *The Right to Know*, *supra* note 35, at 83, 88.

39. NINTH ANNUAL REPORT, *supra* note 35, at 29.

40. *The Right to Know*, *supra* note 35, at 83, 88.

41. NINTH ANNUAL REPORT, *supra* note 35, at 29; 128 CONG. REC. H5555 (daily ed. Aug. 10, 1982).

42. *The Right to Know*, *supra* note 35, at 84.

43. NINTH ANNUAL REPORT, *supra* note 35, at 34, 35. One could argue, however, that the broadcasting of certain news items in and of itself may cause social or political uprisings within a nation regardless of the content of the news item. Not all foreign broadcast services follow policies like those of RFE and RL. Voice of America (VOA), which is funded by the Department of State, is the official news service of America. It is considered to be the "official voice of the executive branch, which conducts American foreign policy." The goal of VOA is "to serve as a reliable, objective source of news, to present U.S. policy, and to portray American society." VOA is part of the United States Information Agency, and although the Secretary of State defines their policy guidelines, VOA is given administrative independence. INTERNATIONAL NEWS, *supra* note 35, at 41. VOA is allowed to broadcast a substantial amount of "editorial opinion" in its radio programs. Conversely, RFE and RL have restrictions on such broadcast content. In fact, in March 1982, VOA acquired a new director who sought to increase the editorial portions of VOA's broadcasts. Some of the staff writers on VOA believed that "increasing the propaganda role would jeopardize the radio's reputation for evenhanded presentation of the news." N.Y. Times, July 11, 1982, § 1, at 4, col. 1. John R. Hughes, confirmed by the Senate on July 1, 1982 as the new director of VOA, felt that editorials reflecting foreign policy, or, in effect, "articulating the viewpoint of the Government" are necessary to broadcast. Thus, while VOA is concerned with painting a picture of

allowed to broadcast material which could incite a revolt or support illegal actions.⁴⁴ Moreover, they must avoid broadcasting “propagandistic argumentation” or any material which would favor capitalist social systems over communism.⁴⁵ In addition, during an emergency in Eastern Europe or the Soviet Union, RFE and RL may not broadcast internationally about the crisis conditions.⁴⁶ It would seem unlikely that radio jamming would occur since the program content of RFE and RL broadcasts must follow stringent restrictions to avoid overtones of propaganda. Despite such restrictions, however, the Soviet Union and other Eastern European nations continue to jam non-propagandistic broadcasts under the claim of protecting State sovereignty.⁴⁷

American lifestyle and politics for foreign nations, RFE and RL are concerned with disseminating accurate, objective news to citizens of foreign nations. *Id.*

44. NINTH ANNUAL REPORT, *supra* note 35, at 34. An example of such a broadcast is the RFE broadcast to Hungary in 1956. During the Hungarian Revolution, there were claims that RFE broadcasting incited the uprising against the government. Various individuals contended that the broadcasts implied that the U.S. would send military aid. Although the radio scripts were not proven to have actually stated that the U.S. would send military aid, the Hungarian citizens interpreted the RFE broadcasts in that manner. This incident illustrates that when a nation sends a radio broadcast, it may not intentionally attempt to incite a revolt, although in effect its acts may contribute to the occurrence anyway. RFE was jammed during the Hungarian Revolution to prevent further RFE broadcasts from reaching the citizens, in an attempt to avoid the potential of inciting a riot. B. PAULU, *supra* note 37, at 363.

45. NINTH ANNUAL REPORT, *supra* note 35, at 34.

46. *Id.* at 35; *see supra* note 44.

47. Such “non-propagandistic” programming is even more likely to be jammed during crisis situations. Thus, the Hungarian Revolution marked an early period of intensified radio jamming for RFE. B. PAULU, *supra* note 37, at 362. During the Hungarian Revolution, RFE audiences grew because RFE continuously provided information about the Revolution. Again in 1968, jamming of RFE increased substantially in Czechoslovakia due to the increasingly volatile political situation in that country. INTERNATIONAL NEWS, *supra* note 35, at 63; B. PAULU, *supra* note 37, at 314. In January, of 1968, Alexander Dubcek was appointed the First Secretary of the Czechoslovak Communist Party. His first eight months as First Secretary were known as the “Prague Spring.” Dubcek transformed the rigid censoring politics which were then in effect into more liberal policies. In August of 1968 Soviet troops, along with Bulgarian, Hungarian, Polish and East German forces invaded Czechoslovakia. Dubcek was replaced in April of 1969, and Czechoslovakia resumed following the rigid Soviet censoring of news and media. As a result, RFE again experienced interference. Since that time, Czechoslovakia has never ceased jamming RFE. INTERNATIONAL NEWS, *supra* note 35, at 63. A more recent example of jamming during a national crisis occurred in Poland during 1980 and 1981. After Poland was declared to be under martial law in December of 1981, the Soviet Union intensified Poland’s jamming to “the highest levels in history.” THE BOARD FOR INTERNATIONAL BROADCASTING, EIGHTH ANNUAL REPORT I (1982) [hereinafter cited as EIGHTH ANNUAL REPORT]. During the fall of 1980, when Polish citizens were uprising, a survey indicated that two thirds of the adult population were listening to RFE. The communications minister, however, claimed the equipment used to jam RFE was in “bad shape” and that there would be no radio jamming. RFE not only incurred intensi-

II. PROTECTING SOVEREIGNTY: THE LEGAL JUSTIFICATION FOR RADIO JAMMING

States are sovereign under international law.⁴⁸ Territorial sovereignty is defined as “[t]he right of a State to function within a certain territory, unimpeded by any interference from the outside”⁴⁹ In the case of *The Island of Palmas (or Miangas)*,⁵⁰ the International Court of Justice (I.C.J.) expanded on the notion of sovereignty. The I.C.J. stated that sovereignty “signifies independence,” even to the extent that excluding other States is within a nation’s power.⁵¹ States not only have sovereignty within their territorial boundaries, but also have sovereignty over the airspace above their frontiers and their territorial waters.⁵²

The doctrine of national sovereignty is often used by some States to justify their restriction of the free flow of information across their national borders. These States believe that foreign broadcasts into their territories are a challenge to their national sovereignty, and consequently claim the right to protect themselves from outside interference with their internal affairs.⁵³ These States claim that intentional harmful interference utilized to prevent foreign radio broadcasts from entering their territories is legal under international law.

While the doctrine of national sovereignty appears to provide a legitimate legal basis upon which to justify radio jamming, this argument breaks down under closer inspection. Preliminarily, the doctrine does give a State the right to protect itself and its citizens

fied jamming, but its Munich headquarters was destroyed by a bomb in 1981. *Id.* at 1. See also TENTH ANNUAL REPORT, *supra* note 1, at 9.

48. NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATIONS, *supra* note 29, at 206.

49. 1 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 241 (1928).

50. *The Islands of Palmas (or Miangas) (U.S. v. Neth.)*, Hague Ct. Rep. 2d (Scott) 366 (Perm. Ct. Arb. 1928).

51. *Judicial Decisions Involving Questions of International Law—The Islands of Palmas (or Miangas)*, 22 AM. J. INT’L L. 875 (1928). This case involved a dispute between the U.S. and the Netherlands. The U.S. claimed territorial sovereignty over the Island of Palmas by way of cession under the Treaty of Paris of 1898. The Netherlands claimed territorial sovereignty over the island by way of prescription. The court decided in favor of the Netherlands.

52. D.H.N. JOHNSON, RIGHTS IN AIR SPACE 74 (1965); NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATIONS, *supra* note 29, at 207. Although States are free to exercise sovereign power within their territories, in some matters States must prove that there are no limitations on their sovereign power under customary international law or as a result of treaty obligations. *Id.* at 206.

53. Klein, *Legal Aspects of Radio Jamming*, 4 PERF. ARTS. REV. 101 (1973).

from invasions of its territory,⁵⁴ and the airspace above the State's territory is regarded as protected under the doctrine.⁵⁵ Thus, state sovereignty has been used to justify the prohibition of flights by aircraft, spacecraft, and other physical objects over the territory of a given State. Such physical objects are almost always controllable and therefore can be directed away from a given territory. When they do cross into a given nation's territory the act is usually volitional and the doctrine of national sovereignty is an appropriate basis for redress.

On the other hand, radio broadcasting, by its very nature, involves a technical resource which makes it distinguishable from aircraft or spacecraft.⁵⁶ Once a frequency is broadcast, the signal cannot be controlled⁵⁷ or retrieved.⁵⁸ Additionally radio frequencies, unlike airplanes or spacecraft, cannot be easily directed to avoid the penetration of national boundaries.⁵⁹ Thus, States have a weak claim to sovereignty over radio broadcasting because in many instances the invasion of territorial space is unintentional and beyond the control of the transmitting State.⁶⁰

In addition, if the doctrine of sovereignty provides nations the right to intentionally interfere with radio frequencies which penetrate their territorial airspace, then it follows that a State has the right to jam any foreign broadcast which enters its airspace. This result would lead to chaos because, like the original transmission itself, the jamming signal cannot be confined within a national

54. See generally M. WHITEMAN, *supra* note 49, at 241-255.

55. D.H.N. JOHNSON, *supra* note 52, at 74.

56. JOINT TECHNICAL ADVISORY COUNCIL (JTAC) OF THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS AND ELECTRONIC INDUSTRIES ASSOCIATION, RADIO SPECTRUM UTILIZATION: A PROGRAM FOR THE ADMINISTRATION OF THE RADIO SPECTRUM, 3-6 (1965) *as cited in* D. LEIVE, *supra* note 10, at 16. The radio spectrum is a resource made up of dimensions of space, time, and frequency, all of which should be used to prevent waste. Use of the resource is possible within a single geographical area depending on the physical characteristics of the particular frequency. Furthermore, the radio spectrum is an international resource available to all nations since there are no territorial confines. Thus, to use the radio spectrum efficiently, an allotment plan for the frequencies is necessary to avoid interference.

57. *Id.* at 16; THE INTERNATIONAL LAW OF COMMUNICATIONS 74 (E. McWhinney ed. 1971). In fact, it is impossible to prevent radio waves from travelling through the airspace of a foreign nation.

58. C. ALEXANDROWICZ, THE LAW OF GLOBAL COMMUNICATIONS 30 (1971). Radio waves cannot be defined vertically, according to national territory, nor horizontally in the airspace around the earth. In addition, radio transmission is not related to airspace, as is an airplane flying over a national territory.

59. *Radio Propaganda*, *supra* note 9, at 157.

60. C. ALEXANDROWICZ, *supra* note 58, at 30.

boundary.⁶¹ Thus, the jamming signal often crosses boundaries and prevents the reception of the broadcast within the transmitting State itself. Therefore, while the jamming nation is technically protecting its sovereignty, it is also violating the sovereignty of the broadcasting State.⁶²

The legal basis for radio jamming—national sovereignty—provides an inadequate justification because (1) the invasion is often noncontrollable, and (2) the jamming itself violates the doctrine. Regardless of these arguments, nations continue to justify intentional harmful interference by relying on the concept of sovereignty. Several additional arguments, however, have been advanced to show that radio jamming does, in fact, violate international law.

III. ARGUMENTS THAT RADIO JAMMING IS A VIOLATION OF INTERNATIONAL LAW

A. *Radio Jamming as a Violation of the Right to Freedom of Information*

Freedom of information is considered a human right which has been guaranteed in various international legal documents. One of the first international documents which provided for freedom of information is the Universal Declaration of Human Rights.⁶³ The Helsinki Accord is another international agreement which provides for a free flow of information.⁶⁴ The treaty which guarantees freedom of information is the International Covenant on Civil and Political Rights.⁶⁵ Finally, there are numerous national Constitu-

61. *Id.* at 30; NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATIONS, *supra* note 29, at 208.

62. In this regard, it should also be noted that the States which most often rely on the justification of protecting sovereignty are also the same States which themselves broadcast propaganda. The Soviet Union and those Eastern European nations that engage in radio jamming against western radio stations broadcast a total of about 1,350 hours per week to North America and Western Europe. In fact, the Soviet Union's Radio Moscow and Radio Peace and Progress broadcast 1,900 program hours per week in eighty-four languages; this is the largest foreign broadcasting output in the world. Such nations undermine their legal justification of radio jamming by broadcasting programs into other nations. See *The Right to Know*, *supra* note 35, at 14.

63. G.A. Res. 217, U.N. Doc. A/810 (1948).

64. Final Act of the Conference on Security and Cooperation in Europe, August 1, 1975, *reprinted in* 14 INT'L LEGAL MATERIALS 1292 (1975) [hereinafter cited as Helsinki Accord].

65. International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) [hereinafter cited as Covenant on

tions throughout the world which provide for this right.⁶⁶

1. *Universal Declaration of Human Rights.* Under Article 19 of the Universal Declaration of Human Rights, all peoples are entitled to the right to freedom of information.⁶⁷ The Declaration states: “[E]veryone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁶⁸

The Universal Declaration of Human Rights is not a multilateral convention or treaty, and technically is not considered to be a legally binding document.⁶⁹ The Declaration, however, does provide authoritative significance in the international legal order. It has been influential in creating principles of international law which all countries are expected to follow.⁷⁰ In fact, under one theory, the Declaration has been considered legally binding as customary international law.⁷¹

Civil and Political Rights]. The Covenant on Civil and Political Rights entered into force on March 13, 1976.

66. See *infra* note 114 and accompanying text.

67. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948). Although the Universal Declaration of Human Rights is not a treaty, many nations adhere to its provisions in the interest of maintaining peace. There were forty eight nations, including Cuba, which signed the Declaration in 1948. The Soviet Union and the Eastern European nations abstained from voting.

68. *Id.*

69. H. BOKOR-SZEGO, *THE ROLE OF THE UNITED NATIONS IN INTERNATIONAL LEGISLATION* 128 (1978). Treaties are considered the most unambiguous method of creating international law. S. WILLIAMS & A. DE MESTRAL, *AN INTRODUCTION TO INTERNATIONAL LAW* 14 (1979). United Nations Declarations do not have the legal force that treaties and conventions carry. *Id.* at 71; J. CASTANEDA, *LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS* 193 (1969); Comment, *A New International Information Order: The Developing World and the Free Flow of Information Controversy*, 8 SYR. J. INT'L L. & COM. 249, 253 (1980) [hereinafter cited as *New Information Order*].

70. H. BOKER-SEGO, *supra* note 69, at 72. The expectation that countries will follow UN declarations becomes so strong that the declarations shape many norms which eventually become binding upon States.

71. J. CASTANEDA, *supra* note 69, at 193; *New Information Order*, *supra* note 69, at 251; S. WILLIAMS & A. DE MESTRAL, *supra* note 69, at 15. Customary law is the second source of international law most frequently relied upon. Joyner, *U.N. General Assembly Resolutions and International Law: Rethinking the Contemporary Dynamics of Norm-Creation*, 11 CAL. W. INT'L L. J. 445, 454 (1981). Joyner states that this form of law expresses “the will of the States.” *Id.* at 457; see also Statute of the I.C.J., art. 38 which states:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. international custom, as evidence of a general practice accepted as law;

Statute of the I.C.J. art. 38.

The United States pronounced its acceptance of the Declaration as customary international law in the case of *Filartiga v. Pena-Iralia*.⁷² The Second Circuit of the United States Court of Appeals stated that in regard to the right to be free from torture, "This prohibition has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights . . ."⁷³ Under the *Filartiga* decision the United States has obligated itself to follow the provisions of the Declaration as binding customary international law, and thus is obligated to provide its citizens with freedom of information without interference.

Although the United States recognizes the Universal Declaration of Human Rights as customary international law, other nations may not. One argument which would make the Declaration a binding international instrument is to consider the Declaration as a supplement to the United Nations Charter.⁷⁴ Articles 1, 55 and 56 of the UN Charter obligate members to provide fundamental freedoms for all their people.⁷⁵ The court in *Filartiga* stressed that the Declaration is instrumental in listing the freedoms which are guaranteed by the UN Charter.⁷⁶ Since the Charter is a treaty, its provisions are legally binding, and if construed together the provisions of the Declaration would be legally binding as well. Under such a construction the Declaration would render radio jamming a violation of international law, since the practice prevents the free flow of information.

Radio jamming infringes on both the citizens' rights and the broadcasters' rights under the Universal Declaration of Human

72. 630 F.2d 876 (2nd Cir. 1980). In *Filartiga*, Paraguayan nationals sued another Paraguayan in the U.S. for causing the torture of their son while in Paraguay. The Court of Appeals allowed jurisdiction based on the Alien Tort Statute. The Court went on to hold that jurisdiction was valid based on 'customary international norms which prohibit torture.

73. *Id.* at 882. Justice Kaufman's opinion delves into the provision against torture under the Universal Declaration of Human Rights. The opinion then discusses the adoption of the Declaration as a customary norm for international law. Justice Kaufman states: "Indeed, several commentators have concluded that the Universal Declaration has become, *in toto*, a part of binding, customary international law." *Id.* at 883.

74. J. CASTANEDA, *supra* note 69, at 193; *New Information Order*, *supra* note 69, at 252, 253; Paust, *Transnational Freedom of Speech: Legal Aspects of the Helsinki Final Act*, 45 L. & CONTEMP. PROB. 53 n.4 (1982). Paust asserts that the Universal Declaration of Human Rights provides "at a minimum, the legally relevant content of the human rights guaranteed to all by the U.N. Charter."

75. U.N. CHARTER arts. 1, 55, 56.

76. *Filartiga v. Pena-Iralia*, *supra* note 72, at 883. The court stated that "[T]hese U.N. declarations are significant because they specify with great precision the obligations of member nations under the Charter."

Rights. First, the Declaration applies to “everyone” in the world.⁷⁷ Second, the freedom all people in the world are entitled to is “expression” and “opinion.”⁷⁸ Thus, people should be allowed to listen to news broadcasts as well as cultural programs. Third, citizens of the world are entitled to receive information without interference.⁷⁹ Under this element, radio jamming interferes with the right to receive information because it prevents the listeners from hearing the broadcasts they tune into. Fourth, radio broadcasters have the right to “impart information.”⁸⁰ The Declaration not only allows the audiences to hear the programs but also allows the broadcasters to send out information. Finally, the Declaration applies to “any media . . . regardless of frontiers.”⁸¹ This provision therefore permits radio stations to broadcast into foreign territories. Thus, Article 19 of the Declaration gives wide discretion as to (1) what may be broadcast over radio, (2) where these broadcasts may extend, and (3) to whom radio broadcasts may reach.

Although the Universal Declaration of Human Rights may be interpreted as legally binding either as customary international law or as a supplement to the UN Charter, its provisions are nevertheless given various interpretations throughout the world. Moreover, the various divergent interpretations of what constitutes freedom of information encourages radio jamming, regardless of whether the practice is considered as a violation of Article 19 of the Declaration. Additionally, various provisions of the Declaration have been adopted in national and other international documents⁸² such as the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accord),⁸³ which have further modified international law surrounding radio broadcasting.

2. *Helsinki Accord.* The provisions for freedom of information in the Helsinki Accord were not new to the international community at the time the Conference took place in 1975.⁸⁴ The Final

77. G.A. Res. 217, U.N. Doc. A/810, art. 2, at 71 (1948).

78. *Id.* at art. 19.

79. *Id.*

80. *Id.*

81. *Id.*

82. J. CASTANEDA, *supra* note 69, at 195; *New Information Order*, *supra* note 69, at 253.

83. Helsinki Accord, *supra* note 64. Like the Universal Declaration of Human Rights, the Helsinki Accord does not *per se* create legal obligations. *Id.* at 1292. Its provisions, however, have influenced the signing of other international obligations. *Radio Propaganda*, *supra* note 9, at 168.

84. Paust, *supra* note 74, at 53.

Act, however, did reinforce the obligation that States provide fundamental human rights to all its citizens, including freedom of information.⁸⁵ Article VII of the Helsinki Accord is a broad agreement for States to respect and promote fundamental freedoms.⁸⁶ The Accord requests States to act in accordance with the UN Charter and the Universal Declaration of Human Rights, as well as other international agreements regarding human rights.⁸⁷

In conjunction with the broad request under Article VII for States to respect human rights, the section on Co-operation in Humanitarian and Other Fields⁸⁸ specifically requests nations to promote the free broadcast of information. In this regard, the Helsinki Accord states, in pertinent part, that:

They will encourage the wider showing and broadcasting of a greater variety of recorded and filmed information from other participating States, illustrating the various aspects of life in their countries and received on the basis of such agreements or arrangements as may be necessary between the organizations and firms directly concerned The participating States note the expansion in the dissemination of information broadcast by radio, and express the hope for the continuation of the process, so as to meet the interest of mutual understanding among peoples and the aims set forth by this conference.⁸⁹

Thus, the Helsinki Accord encourages international radio broadcasting as a means to openly disseminate worldwide information.

The Helsinki Accord is not technically binding.⁹⁰ However, like the Universal Declaration of Human Rights, it has been instrumental in shaping other legal documents.⁹¹ More importantly, the Helsinki Accord has been recognized by some nations as a source of international law by providing norms which nations are obligated to follow.⁹² Accordingly, the United States posits that radio

85. *Id.*

86. Helsinki Accord, *supra* note 64, at 14 INT'L LEGAL MATERIALS 1295. Article VII is entitled "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief."

87. *Id.* art. VII.

88. *Id.* at 14 INT'L LEGAL MATERIALS 1315.

89. *Id.* at 1316. According to this provision, creating Cuban broadcasting would fulfill the goals of expanding information through broadcast media.

90. *See supra* note 83.

91. Paust, *supra* note 74, at 63. Changes in U.S. immigration laws were influenced by the Helsinki Accord. In addition, the 1976 Soviet Constitution incorporated all ten principles of the Helsinki Accord's Declaration of Principles.

92. *Id.* at 56-59. Although recognizing the Helsinki Accord as non-binding, numerous Eastern European as well as Soviet scholars take the position that the Accord creates moral

jamming is illegal because it violates the Helsinki provision which calls for "wider dissemination of information of all kinds."⁹³ On the other hand, the Soviet Union argues that broadcast content does not "meet the interest of mutual understanding among peoples and the aims set forth by [the] Conference,"⁹⁴ and according to the Soviet interpretation jamming would be legal under the Helsinki Accord.⁹⁵ Since the Accord is open to such widely varying interpretations, it does not conclusively resolve the issue of whether radio jamming is a violation of international law.⁹⁶

3. *International Covenant on Civil and Political Rights.* The International Covenant on Civil and Political Rights is yet another international document containing a provision relating to freedom of information.⁹⁷ The Covenant parallels the Universal Declaration and the Helsinki Accord in respect to the provisions for freedom of information, although under the Covenant the restrictions on the freedom of information are more specifically defined. In addition, the Covenant is an international agreement and as such is legally binding on signatories. Many nations, however, are not signatories and therefore are not bound by its provisions.

Article 19 of the Covenant provides that everyone shall have the right to freedom of seeking, receiving and imparting information.⁹⁸ This Article also provides that everyone should have "the right to hold opinions without interference."⁹⁹ The Covenant, however, also restricts the free flow of information by permitting States to enact laws which curtail the freedom of information under specialized and detailed circumstances.¹⁰⁰ Article 20, for example,

obligations and standards which should be followed by the international community. "Moreover, a 'nonbinding' document can contribute through time to the shaping of attitudes and behavior to such an extent that it becomes accepted either as a legally relevant aid for the interpretation of other international and domestic legal instruments, or as evidence of customary international law." *Id.* at 59.

93. *Radio Propaganda*, *supra* note 9, at 168; NINTH ANNUAL REPORT, *supra* note 35, at 3.

94. *Radio Propaganda*, *supra* note 9, at 168; Helsinki Accord, *supra* note 64, at 14 INT'L LEGAL MATERIALS 1316.

95. *Radio Propaganda*, *supra* note 9, at 168.

96. INTERNATIONAL NEWS, *supra* note 35, at 157, 158. Freedom of information by most of the western nations would mean less restrictions and greater volume of information. However, the Soviet view is that the free information objective of the Helsinki Accord is an attempt to interfere with their internal affairs.

97. Covenant on Civil and Political Rights, *supra* note 65.

98. *Id.* art. 19(2)

99. *Id.*

100. *Id.* Article 19(3) states:

prohibits any war propaganda and the incitement of discrimination or hostility.¹⁰¹ Obviously this provision would apply to propaganda and the incitement of discrimination communicated via radio broadcasts.¹⁰² Hence, freedom of information is restricted under the International Covenant of Civil and Political Rights.¹⁰³ Nations engaging in radio jamming may claim they are protecting public order and prohibiting propaganda broadcasts. Conversely, nations which are the victim of jamming may claim they have a right to freedom of information.

4. *Individual Nations' Interpretation of Freedom of Information as a Constitutional Right.* One of the main problems with reconciling radio jamming with the free flow of information is that many nations interpret "freedom of information" differently. For example, in a democratic society such as the United States numerous groups compete to send out information encompassing a variety of beliefs.¹⁰⁴ While citizens have a wide range of information they do not have complete freedom.¹⁰⁵ The informational restraints in a democratic society, however, are minimal when compared to those enforced by nations such as the Soviet Union.¹⁰⁶ This is because democracies arguably focus on providing the individual with the opportunity to receive and communicate as much information as possible.¹⁰⁷ Freedom of information in a democratic society is interpreted as a right that should be as minimally

The exercise of rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputation of others:

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

New Information Order, *supra* note 69, at 254 n.28.

101. Covenant on Civil and Political Rights, *supra* note 65, at art. 20.

102. NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATION, *supra* note 29, at 177.

103. See *New Information Order*, *supra* note 69, at 253. Included as signatories to the Covenant as of March 1976 are Bulgaria, Czechoslovakia, Hungary, Romania, the Soviet Union and Yugoslavia. Neither the United States nor Cuba are parties.

104. INTERNATIONAL COMMUNICATION 22 (H. Fischer & J. Merrill eds. 1970). The various groups in a democracy have different political interests. Democracies allow these groups to disseminate their own ideas and beliefs to the masses.

105. *Id.* at 21. By allowing complete freedom to communicate to any individual, the freedom of other individuals would be restricted. Also, most democracies will exclude dissemination of material which would be in conflict with the moral values of the majority. *Id.* at 72.

106. *Id.* at 21, 22.

107. *Id.*

restrained as possible. Likewise, in the international arena the western democracies encourage the freedom of “two-way” international communications.¹⁰⁸ The incoming flow of information is readily allowed and only a few restrictions are placed on the outgoing flow of information.¹⁰⁹

In contrast, Communist regimes have a much more restrictive interpretation of freedom of information and communications systems are government controlled monopolies which carefully filter and shape the information that reaches the people.¹¹⁰ Such censorship is necessary in order to control broadcast content.¹¹¹ One form of censorship used in the Soviet Union and Poland is to impose penalties on citizens who repeat to others what they heard on a foreign broadcast.¹¹² The Eastern European nations and the Soviet Union also punish persons who disseminate “false” information.¹¹³ Thus, restraints on the media and the free flow of information are by comparison intense in the communist countries.

The differences in this area between the communist and democratic nations may be demonstrated by their conflicting approaches to the scope of a constitutional right to the free flow of information. The East European nations, Cuba, and the Soviet Union all state in their Constitutions that freedom of speech may be exercised, but only within the parameters of socialist society.¹¹⁴ In the Soviet

108. *Id.* at 27.

109. *Id.*

110. *Id.* at 45, 48. *The Right to Know*, *supra* note 35, at 66, 72, 77. In Eastern Europe and the Soviet Union “the media are a key element in the fabric of power.”

111. *The Right to Know*, *supra* note 35, at 72.

112. *Id.* at 70; B. PAULU, *supra* note 37, at 310; Osakwe, *The Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution*, 127 U. PA. L. REV. 1350, 1401 (1979). The Soviet Union restricts the freedom of speech guaranteed in their Constitution by providing sanctions under criminal and tort law to regulate speech. *Id.* Osakwe, *supra* at 1392, 1401.

113. *The Right to Know*, *supra* note 35, at 70, 76. In some cases, passing on information obtained from a foreign radio broadcast may be considered disseminating false information. *Id.* at 76.

114. THE CONSTITUTIONS OF THE COMMUNIST WORLD (W. Simons ed. 1980). Article 54, paragraph 1 of the Bulgarian Constitution allows freedom of speech and of press. *Id.* at 49. The Czechoslovakian Constitution guarantees the freedom of speech and of the press under Article 28. *Id.* at 148. Article 64 of the Hungarian Constitution permits freedom of speech and of the press. *Id.* at 210. Article 38 of the Polish Constitution allows freedom of speech and of the press. *Id.* at 306. Romanian citizens are guaranteed this right under Article 28 of their Constitution. *Id.* at 323. Finally, the Yugoslavian Constitution confers this right for its citizens under Article 167. *Id.* at 501. Article 52, paragraph 1, of the Cuban Constitution states “Citizens have freedom of speech and of the press in keeping with the goals of the socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are

Union, for instance, the freedom to receive and send out information imposes duties on each citizen.¹¹⁵ These duties include the promotion of the Soviet State and the protection of public order.¹¹⁶ In addition, Soviet citizens are prohibited from “injuring” the interest of the State while exercising their rights to freedom of information and speech.¹¹⁷ In regard to receiving or imparting prohibited information, Soviet law makes such actions criminal offenses.¹¹⁸

There are two basic reasons why the Soviet Constitution provides for the right of freedom of information, yet imposes so many restrictions on this right.¹¹⁹ First, Soviet society is “classless” and the means of production are in the hands of the people. Every individual is considered equal and therefore incapable of being exploited by any other individual.¹²⁰ Since the Soviet’s view class exploitation as the basis for all human rights violations, they believe that their society is free from such occurrences.¹²¹

Second, the Soviet State considers itself a society of the “entire people.”¹²² The people and the State are deemed one in the same, and restrictions on human rights, where they exist, are mandated by the people. Thus, any restriction on the freedom of information is not a violation of a Soviet citizen’s human rights because the citizen, in the abstract, has authorized such a restriction.

state or social property, and can never be private property. This assures their use at the exclusive service of the working people and in the interests of society.” Similarly, the Soviet Union’s 1977 Constitution states in Article 50, paragraph 1, “In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, of assembly, of meetings and of street marches, and demonstrations.”

115. Osakwe, *supra* note 112, at 1392. For each human right guaranteed in the Soviet Constitution “there is a concomitant duty.” Feldbrugge, *The Soviet Human Rights Doctrine in the Crossfire Between Dissidents at Home and Critics Abroad*, 13 VAND. J. TRANSNAT’L L. 451, 462 (1980). “The exercise of rights and freedoms is inseparable from the performance by the citizen of his duties.” Constitution (Basic Law) of the Union of Soviet Socialist Republics of 1977, art. 59, para. 1.

116. Feldbrugge, *supra* note 115, at 462-463; Osakwe, *supra* note 112, at 1392. Leonid Brezhnev warned Soviet citizens that to assert their Constitutional rights each individual must recognize the responsibility which attaches to the right.

117. Feldbrugge, *supra* note 115, at 462.

118. *Id.* at 456.

119. *Id.*

120. *Id.* at 454-455. The basis for this theory is that economic freedom is the “paramount human right.” As such, labor, (meaning the right to work as well as the obligation to work) is the foundation for all other human rights. Thus, other human rights should not impair labor in the Soviet system.

121. *Id.* at 460.

122. *Id.* at 457.

B. Radio Jamming as a Violation of Article 35 of the ITC

1. *Interpretation of Article 35.* The ITC is the principal treaty which regulates international radio broadcasting and also defines the role of the International Telecommunications Union.¹²³ Similar to the Radio Regulations, the ITC also has a provision prohibiting harmful interference. This treaty attempts to prevent radio jamming even when a nation claims it has a right to protect its sovereignty.

The ITC began its development at a Conference held in Berlin in 1903.¹²⁴ Between 1903 and 1973, a number of conferences were held to modify the ITC. Since radio communications increased greatly during this period, and technical facilities for radio became more modern, the regulations for international broadcasting needed constant revising to accommodate the times.¹²⁵ The 1959 Geneva Conference marked the year in which the Radio Regulations were modified to its present form, with the exception of a few recent changes in specific provisions. The conference attempted to adopt "clear and explicit rules governing all portions of the spectrum."¹²⁶ By that time, most frequencies were in use.¹²⁷ Finally, in 1973 the ITC was updated to its present form.¹²⁸

123. See generally ITC, *supra* note 11.

124. D. LEIVE, *supra* note 10, at 40. This conference produced the first draft convention for international telecommunications. In 1906, another Berlin conference created the first International Radiotelegraph Convention, which was signed by twenty-seven nations. *Id.* at 41. Annexed to this convention were Radiotelegraph Regulations which provided technical solutions to reduce interference.

125. *Id.* at 44, 45, 55, 72. The first Berlin Convention was modified at the London International Radiotelegraph Conference in 1912. J. TOMLINSON, INTERNATIONAL CONTROL OF RADIOCOMMUNICATIONS 14 (1945). The table of frequency allocations had been adopted at the Washington Conference. D. LEIVE, *supra* note 10, at 45. The importance of the next conference, which met in Madrid in 1932, was to draft a single telecommunications convention for telegraph and radio communications. J. TOMLINSON, *supra* at 69, 70. In 1947, another ITU communications conference was held to modify the ITC. The significance of this modification was that it attempted restructure the ITU in an effort to strengthen the regulatory regime. A more powerful ITU was needed due to increased use of the frequency spectrum. D. LEIVE *supra* note 10, at 55.

126. D. LEIVE, *supra* note 10, at 72.

127. *Id.* The frequency spectrum is a resource which should be used to prevent waste. See *supra* note 56 and accompanying text.

128. See generally ITC, *supra* note 11. The ITC first gives the basic provisions for its structure and purposes. Second, the General Provisions relating to telecommunications are listed. Next, the ITC includes Special Provisions for radio. The final portion of the Basic Provisions contains provisions explaining the ITU's relation to the United Nations and the application of the ITC and the Radio Regulations to the ITU.

The second portion of the ITC, entitled the General Provisions, states specific rules the ITU follows to carry out its functions and purposes. For instance, rules of procedures to be

Throughout the development of the ITC, the basic problem which caused the various changes in the convention was the question of how to settle harmful interference disputes in international radio communications.¹²⁹ At present, Article 35 of the ITC is the provision prohibiting harmful interference in the radio spectrum. Article 35 states that:

All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members or of recognized private operating agencies, or of other duly authorized operating agencies which carry on radio service, and which operate in accordance with the provisions of the Radio Regulations.¹³⁰

Applying the treaty provision to the numerous incidences of radio jamming results in a finding of grave violations of international law.¹³¹ Article 35 applies to "all stations, whatever their purpose." All stations would include those within the Soviet Union, Eastern Europe, Cuba and the United States. These nations are all signatories of the treaty.¹³²

Article 35 also provides that all stations must be established and operated in "such a manner as not to cause harmful interference." Consequently, all radio stations are obligated to transmit their broadcasting on frequencies which are not already in use.¹³³ Furthermore, radio stations are not allowed to cause interference by overcrowding a frequency which can be used by more than one station.¹³⁴ This element of Article 35 is violated when transmitters intentionally send out signals that interfere with an incoming radio broadcast.¹³⁵ Although each nation selects its own frequencies, radio stations must be assigned to those frequencies in accordance

followed at conferences and meetings are included in this portion of the ITC. The last portion of the ITC contains a provision annexing the Administrative Regulations to the ITC.

The Radio Regulations are annexed to the ITC as an Administrative Regulation, and provide specific technical measures which ITU members must follow to avoid harmful interference. These regulations also contain the procedures the IFRB and member nations must follow to resolve harmful interference disputes. Radio Regulations, *supra* note 10.

129. See generally D. LEIVE, *supra* note 10, at 40-80.

130. ITC, *supra* note 11, art. 35.

131. Klein, *supra* note 53, at 102.

132. ITC, *supra* note 11, at 2656.

133. C. ALEXANDROWICZ, *supra* note 58, at 30. "Jamming waves travel abroad as any other wave and frustrate radio communication not only in the receiving country but also in other countries, including the emitting country."

134. D. LEIVE, *supra* note 10, at 22, 23.

135. NINTH ANNUAL REPORT, *supra* note 35, at 3.

with the Master Frequency Register of the ITU.¹³⁶ When radio jamming occurs in Eastern Europe and against United States' domestic stations, the interference is caused by stations which fail to follow this element of Article 35.

Article 35 also states that radio stations must not cause harmful interference to radio services or communications of (1) "other Members," (2) "recognized private operating agencies" or (3) "other duly authorized operating agencies," which carry on radio services. Essentially, Article 35 protects not only the Members and the parties to the ITC, but any radio station which is recognized or authorized to carry on broadcasting. RFE, RL and the United States' domestic stations should receive protection from harmful interference under this Article. The United States is a member of the ITU,¹³⁷ and RFE, RL and the United States' radio stations are authorized to broadcast as provided for by United States domestic law.¹³⁸ Therefore, RFE, RL, and the United States' domestic stations clearly fall within the protection of Article 35.

The final operative element of Article 35 is that the station which is receiving the interference must be operating in accordance with the Radio Regulations. Between 1956 and 1960, when RFE was being jammed by the Soviet Union in Hungary, there had been no reports of RFE violating the Radio Regulations. During the Czechoslovakian revolution in 1968, there had been no evidence that RFE had violated the Radio Regulations. Again, in 1981 when Polish citizens could not receive clear broadcasts from RFE, there had been no complaints that RFE was violating the Radio Regulations. United States' domestic stations which were jammed in August of 1982 had also been operating in conformity with the Radio Regulations. In 1957, when the United States attempted to receive protection from the Soviet Union's interference, there were reports that Voice of America (VOA)¹³⁹ was interfering with a Soviet radio station in violation of the Radio Regulations. Generally, RFE and the United States' domestic radio stations have fallen within Article 35 and should have received protection from harmful interference.¹⁴⁰ The International Telecommunications Union

136. D. LEIVE, *supra* note 10, at 20.

137. ITC, *supra* note 11; Radio Regulations, *supra* note 10.

138. 22 C.F.R. 1300 (1981); THE INTERNATIONAL LAW OF COMMUNICATIONS, *supra* note 57, at 61.

139. *See supra* note 43.

140. B. PAULU, *supra* note 37, at 310; INTERNATIONAL NEWS, *supra* note 35, at 63; N.Y. Times, Sept. 1, 1982, at A11, col. 1.

(ITU), as a specialized agency of the United Nations, is responsible for enforcing Article 35 of the ITC.¹⁴¹

2. *Enforcement of Article 35.* The International Frequency Registration Board (IFRB) is the most important organ of the ITU in the area of radio communications.¹⁴² The duties of the IFRB include: (1) recording frequency assignments, (2) recording positions of satellites, (3) giving members advice as to the number of radio channels that a particular spectrum may carry without causing harmful interference, (4) performing additional duties as specified in the Radio regulations, and (5) maintaining the essential records related to the performance of its duties.¹⁴³ One of the IFRB's principal duties is to update and maintain the Master Frequency Register.¹⁴⁴ This duty is closely related to settling harmful interference disputes, which generally focus on the legal issue of which station was the first to occupy the frequency in accordance with the Radio Regulations.¹⁴⁵

The IFRB,¹⁴⁶ however, as well as the ITU, have no power to settle radio jamming disputes. First, since the ITU and IFRB depend on the cooperation of their members to carry out the ITC and the Radio Regulations, it is not likely that a member who intentionally disregards the regulations will submit to a settlement of the harmful interference dispute.¹⁴⁷ Second, disputes arising in cases of jamming involve underlying political factors which the ITU has no authority to regulate.¹⁴⁸ Therefore, the quandary to resolve is generally "what constitutes permissible and impermissible propaganda."¹⁴⁹ Unfortunately, the ITU itself has no "supranational" powers because its function is to find technical and administrative resolutions for harmful interference disputes.¹⁵⁰

141. *Radio Propaganda*, *supra* note 9, at 159; United Nations Press Release, August 1982.

142. *The Use of the Radio Spectrum: The Role of the IFRB*, 1969 JURID. REV. 233.

143. ITC, *supra* note 11, art. 10, para. 3.

144. *The Role of the ITU*, *supra* note 26, at 84; D. LEIVE, *supra* note 10, at 326. The "Master International Frequency Register" is the "official 'central file' for all recorded frequency assignments." *Id.* At the end of 1968, the frequency list contained approximately 364,000 assignments.

145. *The Role of the ITU*, *supra* note 26, at 83; Robinson, *Regulating International Airwaves: The 1979 War*, 21 VA. J. INT'L L. 11 (1980).

146. *Radio Propaganda*, *supra* note 9, at 162; D. LEIVE, *supra* note 10, at 141.

147. *The Role of the ITU*, *supra* note 26, at 87.

148. D. LEIVE, *supra* note 10, at 132; *The Role of the ITU*, *supra* note 26, at 30; Radio Propaganda, *supra* note 9, at 165.

149. *Radio Propaganda*, *supra* note 9, at 166.

150. van Panhuys & van Emde Boas, *supra* note 27, at 305.

Regardless of the weakness of the ITU's enforcement powers, the parties to the treaty have a duty to follow its provisions. *Pacta sunt servanda* is the "fundamental principle of the law of treaties."¹⁵¹ This rule binds the parties to their treaties so that they must perform their obligations thereunder in good faith.¹⁵² The principle of *pacta sunt servanda* must be followed to insure the maintenance of peaceful relations among States.¹⁵³ Included in this rule of international law is the notion that "[E]ach State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty."¹⁵⁴ Thus, a member of the ITU has a binding obligation to follow the provisions of the ITC. Despite the fact that a member of the ITU who jams a radio station in order to protect national sovereignty is violating the most basic principle of international law, "little has been done to counter the jamming that has intensified in recent years."¹⁵⁵

IV. PROPOSED SOLUTIONS TO THE PROBLEM OF RADIO JAMMING

It is technically difficult to prevent the jamming of radio frequencies. Some radio stations use high power transmitters and multiple frequencies in an attempt to overcome jamming.¹⁵⁶ At certain times of the day, transmitting conditions may prevent radio jamming from being successful.¹⁵⁷ The use of short wave frequency bands are also more difficult to jam than AM and FM frequency bands.¹⁵⁸ However, even if all of the above broadcasting methods are used, radio jamming is still possible with proper technology.¹⁵⁹ Since the ITC lacks the authority to impose any sanctions on a nation which violates the treaty, nations have no

151. U.N. Doc. A/CN.4/L.106/Add.3k (1964) as cited in 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 222 (1965).

152. *Id.*

153. Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 2419, T.I.A.S. No. 2361. See also 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 222 (1965).

154. 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 222 (1965).

155. NINTH ANNUAL REPORT, *supra* note 35, at 5.

156. *The Right to Know*, *supra* note 35, at 19.

157. *Id.*

158. 128 CONG. REC. H5552 (daily ed. Aug. 10, 1982).

159. The Soviet Union expends between 150 and 300 million dollars a year to maintain transmitters for the purpose of radio jamming. EIGHTH ANNUAL REPORT, *supra* note 47, at 2.

incentive to abide by Article 35. Consequently, other solutions are necessary to curtail the problem of radio jamming.

Adherence to the ITC is accomplished through cooperation. However, States do not always follow all of the provisions, and violation of the treaty seldom carries punishment.¹⁶⁰ The UN Charter allows nations to interrupt economic relations and communication, or to sever of diplomatic relations as methods of sanction.¹⁶¹ When peace is threatened, the UN allows for armed force deployment.¹⁶² Although armed force is a sanction organized by the UN, the other sanctions must be implemented by the nations directly involved in the dispute.¹⁶³ Resorting to armed force may only be allowed when there is an immediate threat to peace, and economic or communication interruption is limited because the target State may take drastic countermeasures against such sanctions.¹⁶⁴ These countermeasures may be more injurious to nations than the injury caused by the original dispute.

Imposing armed force, economic, or communication sanctions on a nation which intentionally causes harmful interference with a foreign radio station is overly drastic. The fact that a group of individuals may not have been able to hear a radio program does not necessarily threaten peace between the transmitting nation and the receiving nation. Not all radio programs contain information which, if interfered with, would be detrimental to the listener. For example some radio broadcasts contain only entertainment programs. On the other hand, some programs contain pertinent news information for the listeners which they may rely on daily,¹⁶⁵ and during times of crisis radio has always been an important source of communication to listeners.¹⁶⁶

To remedy the problem of radio jamming it is necessary to take into account the reason why intentional interference with radio programs occurs. Radio jamming will continue to occur if propaganda continues to be broadcast. The nations which heavily

160. See P. KUYPER, *THE IMPLEMENTATION OF INTERNATIONAL SANCTIONS* 2 (1978).

161. *Id.* at 4.

162. *Id.* Implementation of armed force is centralized by the Security Council. Article 2 of the United Nations Charter provides that members should refrain from the threat of use of force, and should solve their disputes peacefully. *Id.*

163. *Id.*

164. *Id.* at 12.

165. See *supra* note 12 and accompanying text. When WHO was jammed by Cuba, the effect could have been harmful to farmers who rely on the station's weather reports.

166. See S. DRYER, *RADIO IN WARTIME* 144 (1942).

ensor their media will most likely continue to jam radio frequencies unless international restraints are placed on broadcast content.

A. Restraints on Broadcast Content

One solution to remedy jamming would be to place restraints on the broadcast content of foreign radio programs. Although the ITC attempts to prohibit harmful interference by encouraging freedom of information across territorial lines, the ITC and the Universal Declaration of Human Rights fail to place necessary restraints on freedom of information. Although other international documents have attempted to define freedom of information,¹⁶⁷ the ITC has not. While the ITC restricts censorship by prohibiting jamming, there are no prohibitions on propaganda.¹⁶⁸ If the ITC contained provisions to restrict broadcast content, nations accused of radio jamming would have redress for claims that the broadcasting nation violated the provisions restricting broadcast content. Broadcast content could be restricted by prohibiting both intentional and unintentional propaganda.¹⁶⁹ Neutral arbitrators, such as the IFRB, could interpret what would be classified as propaganda.

Similarly, the ITC could adopt a provision allowing the free flow of information, subject to certain restraints. Those exercising the free flow of information, (radio broadcasters), should have duties and responsibilities delineated within the provision. One duty would be to abide by the provision prohibiting propaganda. Another responsibility would be that international broadcasters should respect the interests of the citizens as well as the ruling government of those nations to which they transmit their messages.

B. ITC Adoption of a Definition of the Free Flow of Information

In addition to the previously mentioned provisions, the ITC needs a mechanism to enforce new restraints on international broadcasting. Since the IFRB is responsible for arbitrating harmful interference disputes, it should also be granted the power to arbitrate intentional harmful interference disputes. The members chosen as arbitrators to a dispute would be recognized neutral parties,

167. *See generally*, NATIONAL SOVEREIGNTY AND INTERNATIONAL COMMUNICATIONS, *supra* note 29, Chapter 9.

168. Other international legal sources, however, do prohibit propaganda, *e.g.* the International Covenant of Civil and Political Rights. *See supra* notes 98-102 and accompanying text.

169. R. LINDAHL, BROADCASTING ACROSS BORDERS 35 (1978).

and would allow the party causing the jamming to assert that the restraints on freedom of information were violated. The arbitrators would then be responsible for determining whether the defense was valid, and the arbitration board would then send an advisory opinion to each nation. If the broadcasting country was found not to be adhering to the newly defined duties and responsibilities under the ITC, then the jamming would be allowed. On the other hand, if the nation engaged in radio jamming was censoring the broadcast without a cause, then the arbitration board would publish a report of this violation worldwide, with the adverse public opinion hopefully pressuring the country to cease jamming the stations.

C. *Adoption of Bilateral Treaties*

A further suggestion to remedy radio jamming between nations is for transmitting and receiving States to adopt bilateral treaties.¹⁷⁰ The advantage of separate bilateral treaties is that specific and stringent restraints could be placed on broadcast content when nations have conflicting interpretations of freedom of information. If a Communist nation signed a treaty whereby the broadcasting nation was allowed specific restraints on program content, they would have less fear that other States would interfere with their own political values. In this way the free flow of information would become more balanced to accommodate all nations. Bilateral treaties could also provide for economic sanctions or allow for the interruption of communication if nations who are parties to the treaty wish to follow such measures.

V. CONCLUSION

International radio broadcasting is an extremely important form of communication, as it is an essential method of providing news services to citizens of foreign countries. At present, there are radio stations whose transboundary broadcasts are being continually interfered with on a regular basis.¹⁷¹ Radio stations may be jammed at the whim of a foreign nation, and consequently the practice presents an obstacle to foreign radio broadcasts.

Nations presently have no other recourse to prevent foreign

170. Presently, the United States has a bilateral treaty with Canada which provides a technical agreement for the operation of radio stations near the border. Land Mobile Radio Stations Operating Near the Border, Dec. 21, 1976 and Jan. 13, 1977, United States—Canada, 29 U.S.T. 598, T.I.A.S. No. 8838.

171. See *supra* notes 12, 47 and accompanying text.

propaganda from entering their State other than to intentionally interfere with the radio signals bringing the broadcast. Propaganda may detrimentally affect the views of a nation's citizens, especially during a crisis.¹⁷² Even if the transmitting station does not intend the program to contain biased views, foreign nations have different interpretations of what constitutes propaganda.¹⁷³ Although RFE and RL attempt to restrict their program contents so as not to include propaganda,¹⁷⁴ the Soviet Union continues to jam these stations because they believe the broadcasts nevertheless contain propaganda.

Countries attempt to validly justify radio jamming by relying on the theory of territorial sovereignty, which allows nations to regulate activities within its boundaries.¹⁷⁵ Because radio signals have an international technical nature, radio frequencies cannot be confined to a particular territory in most cases.¹⁷⁶ However, by jamming stations to prevent foreign broadcasts from reaching their nation, the sovereignty of other nations is violated. Furthermore, most countries which engage in jamming also broadcast to foreign countries,¹⁷⁷ which often makes protecting sovereignty a weak justification.

Radio jamming also violates Article 19 of the Universal Declaration of Human Rights; the right to freedom of information.¹⁷⁸ Similarly, the Helsinki Accord, the International Covenant of Civil and Political Rights, and the constitutions of most nations in the world permit freedom of information.¹⁷⁹ Although freedom of information has been written into sources of international law, no source has defined the scope of this freedom.¹⁸⁰ Thus, the communist nations interpret freedom of information much differently than western nations, indicating that the concept is far from absolute.¹⁸¹ Although the ITC prohibits radio jamming through Article 35,¹⁸² jamming continues due to the lack of enforcement powers and

172. *See supra* notes 32-44 and accompanying text.

173. *See supra* note 44 and accompanying text.

174. *See supra* notes 35-46 and accompanying text.

175. *See supra* text accompanying notes 48-62.

176. *See supra* notes 56-58 and accompanying text.

177. *See supra* note 62 and accompanying text.

178. *See supra* note 63, and text accompanying notes 67-76.

179. *See supra* text accompanying notes 64-66, 84-102, and 114-22.

180. *See supra* text accompanying note 167.

181. *See supra* text accompanying notes 104-13.

182. *See supra* text accompanying note 130.

sanctions within in the ITC.¹⁸³ When nations intentionally interfere with radio broadcasts, they violate the ITC and also ignore their obligations to uphold treaty provisions under *pacta sunt servanda*.¹⁸⁴

Since radio jamming cannot technically be remedied, an attempt to regulate it must be made through the establishment of treaties. By regulating the program content of foreign radio broadcasts, radio jamming would be reduced because it usually occurs to prevent certain information from reaching a State's people. Since the ITC prohibits radio jamming, it should also prohibit propaganda.¹⁸⁵ Moreover, an accurate definition of freedom of information is needed to act as a guideline for broadcasters when they are shaping their program content.¹⁸⁶ Treaties which incorporate specific restraints on broadcast content and specific legal sanctions would be useful in helping to preserve the flow of worldwide communications.

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183. See *supra* text accompanying notes 142-50.

184. See *supra* text accompanying notes 151-55.

185. See *supra* text at § IV.

186. See *supra* text at § IV.