MEDIA COVERAGE AND STATE PROPAGANDA IN ARMED CONFLICTS: AN INTERNATIONAL LAW PERSPECTIVE AT THE ARMENIA-AZERBAIJAN "PROPAGANDA WAR"

Ines Gillich*

TABLE OF CONTENTS

I. INTRODUCTION: PROPAGANDA IN MULTI-DIMENSIONAL WARFARE

In the shadow of armed conflict, another, usually subliminal, conflict occurs. Instead of being fought with arms, this conflict takes on words and pictures. Warring parties have

employed control over media coverage and the flow of information to achieve various goals: To keep their citizens' spirits high, to vilify the enemy, to demoralize enemy morale, and to influence public opinion. With the emergence of professional armies in the 19th century, new methods and weapons of warfare, and the accumulation of capital and economic support, often by third states, armed conflicts can be fought on a large scale and for long periods. Thus, warfare has become multi-dimensional. It combines military, political, economic, and psychological pressure, mostly through propaganda[1] directed at the enemy. It is not surprising that by the 1930s, propaganda was being used by most of the states that became a party to World War II and has continued to play a role during the Cold War and beyond. However, propaganda has become a formidable weapon against the enemy and a tool for promoting a national war effort and maintaining unity and goodwill among allies. For example, pictures showing the victim's use of chemical weapons during the Syrian armed conflict in 2015[2] have contributed to the willingness of the United States, the United Kingdom, and France to execute air strikes against the Syrian army. The mass killing of civilians in the Ukrainian city of Bucha in March 2022 motivated Western States to implement economic sanctions against the Russian Federation and Russian citizens in addition to the sanctions already in force.

For these reasons, it is clear that the parties to an armed conflict have a vital interest in controlling and censoring media coverage of armed conflicts as well as actively spreading their

---

* Dr. Ines Gillich, LL.M. (UCLA) is Associate Professor of Public Law, European Law and Public International Law, University of Cologne. This Article is based on a presentation held at Southwestern Law School, Los Angeles on Feb. 4, 2023.

[1] Note that there is no uniform definition of propaganda. In this article, the term propaganda is used according to a common definition to describe a method of communication, by State organs or individuals, aimed at influencing and manipulating the behavior of people in a predefined way. Thus, it is the element of influence and manipulation that is at the center of the concept. And it is used broadly, covering all forms of communications - fake news, disinformation, propaganda. *See* Eric De Brabandere, *Propaganda*, OXFORD INT'L LAW (2019), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e978?rskey=9tlgw9&result=1&prd=MPIL.

[2] *Report of the OPCW-Fact Finding Mission in Syria Regarding the Incidents of the Alleged use of Chemicals as a Weapon in Marea, Syrian Arab Republic*, ORG. FOR THE PROHIBITION OF CHEM, WEAPONS, 1-3 (2015), www.opcw.org/sites/default/files/documents/2022/01/s-2017-2022%2B%28e%29.pdf.

views of the events, which can be incomplete and misleading. "In war, truth is the first casualty," coined by the Greek dramatist Aeschylus in the fifth century B.C. around 550 BC., has become an often quoted expression.

A prominent scene of a fiery media and propaganda battle in the shadow of an international armed conflict unfolded between the Republic of Armenia and the Republic of Azerbaijan over the territory of Artsakh (Nagorno-Karabakh). In the 20th century, this conflict took place over many decades under the shield of the Union of Soviet Socialist Republics (USSR), with Armenia and Azerbaijan being Soviet Socialist Republics, i.e. administrative units within the USSR, and Nagorno-Karabakh being an autonomous Oblast within Azerbaijan during Soviet times. Armenia declared independence on 21 September 1991 and Azerbaijan on 18 October 1991. Amid the gradual dissolution of the Soviet Union in 1988–89, longstanding and wide-ranging tensions between Armenians and Azerbaijanis exploded, and competing claims over that region resulted in hostilities that ended with a ceasefire in May 1994. Further hostilities erupted in September 2020 and lasted 44 days. On November 9, 2020, the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia, and the President of the Russian Federation signed a statement referred to by the Parties as the "Trilateral Statement". Under the terms of this statement, "[a] complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict [was] declared" as of 10 November 2020. The main legal argument from the Azerbaijani side centers around historically and territorially founded claims to Artsakh, whereas the Armenian narrative points to the right to self-determination of the people of Artsakh. While the armed conflict over Artsakh gives rise to a host of questions of international law, such as the legality of the use of force and violations of international humanitarian and criminal law, to name just a few sub-fields. this article focuses on the legality of the "Propaganda War" from an international law perspective.

Following a brief description of the role of traditional and social media platforms in the outlining of the conflict and the measures of information warfare that the warring parties have taken, this article will follow a public international law perspective on the legality of media coverage and state propaganda in armed conflicts. For these purposes, this article will revisit the relevant rules of international law, including international treaties and

customary rules governing free speech, the right to freedom of information, the legality of state propaganda, and the protection of media workers during wartime. In particular, the following analysis will answer a series of questions: Does international law offer protection against misinformation, propaganda, and media repression? What are the legal rules regarding the treatment of foreign journalists and foreign press institutions? And how can these standards be applied with respect to the Armenia-Azerbaijan "Propaganda War" and other post-soviet-era conflict zones? The central argument is that rules of international law are binding for the parties to a conflict and must be obeyed even in a state of war. The bodies of law relevant to answer these questions are general International Law, particularly the principle of non-intervention, International Humanitarian Law as lex specialist applicable in an armed conflict, and International Human Rights Law. It will explore possible remedies against the backdrop of fake news and disinformation and conclude with lessons learned.

II. THE ARMENIAN-AZERBAIJAN "PROPAGANDA WAR"

Both traditional and social media are not immune to manipulation and the spread of propaganda. In the Armenian-Azerbaijan "Propaganda War," the stark contrast between news coverage by international or global media on one hand and local and regional media on the other becomes particularly obvious. A geopolitical narrative is dominant in the international media coverage about the Artsakh conflict, according to which Armenia and Azerbaijan appear as pieces in a larger geostrategic game, torn between regional powers, the Russian Federation on one side and the Republic of Türkiye on the other, who are perceived as pursuing their own geo-strategic goals through the conflict.

This section focuses on media coverage on a local and regional level as well as the measures undertaken by the warring parties. It will demonstrate that the local media outlets and social media content surrounding the Armenian-Azerbaijan conflict is particularly susceptible to propaganda and, therefore, can be a barrier on the road to soothing the armed conflict and contributing to a peaceful solution.

A. DISINFORMATION AND MEDIA PRACTICES DURING THE KARABAKH-WAR

1. *Traditional media*

Information warfare has always been an important part of the Nagorno-Karabakh conflict. This is the main message of a report published by the Service for Foreign Policy Instruments (FPI), a department (Directorate-General) of the European Commission in 2020. The report also analyzed the role of social media platforms and trends in media consumption and the use of social networks over the course of the conflict to determine their influence on shaping the opinions of Armenian and Azerbaijani society on the conflict.[3] The report concluded that, while media coverage of the conflict during the First Karabakh War was mediated by a small number of Armenian and Azerbaijani journalists who maintained contacts and networks with each other, the situation in the Second Karabakh War changed dramatically. Traditional media outlets played a significantly greater role in mediating news about the conflict during the First Karabakh War in the 1990s. In the Second Karabakh War, starting in 2020, official authorities spread disinformation and bypassed traditional media outlets. The result was a reinforcement of enemy images and increased polarization between Armenian and Azerbaijani societies, even among previously moderate persons since the 1990s.[4] The report further states that most Armenian and Azerbaijani-language media reduced their war coverage to the information their respective country's Ministry of Defense provided. There had been little difference between state, independent, or Russian-funded media. War coverage was rather one-sided, uncritically replicating official statements, and lacked pro-peace messages, calls for dialogue, or critical self-reflection.[5]

2. *Social Media*

In addition, it can also be observed that both Armenia and Azerbaijan have launched large-scale campaigns in legacy media

[3] *ERMES III–Event Report Media and Disinformation in the Nagorno-Karabakh Conflict*, COLL. OF EUR. (Jan, 2021), https://www2.coleurope.eu/system/tdf/uploads/news/event_report_-_media_and_disinformation_in_the_nagorno-karabakh_conflict.pdf?&file=1&type=node&id=draft&force=.
[4] *Id.* at 4.
[5] *Id.* at 9.

and on social media platforms, using these platforms as narrative-generating tools to promote their own policy agenda. They marshaled celebrities, such as musicians, social media influencers, and others, to draw attention to their cause. While Armenian and Azerbaijan soldiers fought over Nagorno-Karabakh, their citizens battled on social media. Some observe that the legacy media has lost power and influence to social media. It is reported that digital media platforms and social networks reinforced enemy images over the course of the Second Karabakh War and furthered the already extreme polarization between Armenian and Azerbaijani societies, which confirmed existing beliefs and prejudices.[6] In this respect, the rise of social media has helped to poison historical accounts and templates already established in the Soviet period to reach much wider audiences through new media technology and platforms. Journalists have complained that social networks fragment the media environment. One observer noted: "In terms of information sharing, our society is like an archipelago. It is broken up into islands that communicate inside themselves and with those nearest to them, but never with other islands."[7] Another expert noted: "In Karabakh, I realized that the minds of ordinary people were in confusion. The information they got from Facebook was mixed with information from TV stations and their own perceptions. As a result, they could believe at the same time that we are so strong that we can take Baku and that the authorities of Armenia have sold Karabakh for 2 billion dollars."[8] As the conflict progressed, the fiery atmosphere on social networks incited even moderate voices on both sides to take up radical pro-war positions.[9]

---

[6] Elise Thomas & Albert Zhang, *Snapshot of a Shadow War in the Azerbaijan-Armenia Conflict*, AUSTL. STRATEGIC POL'Y INST. (Oct. 9 2020), https://www.aspistrategist.org.au/snapshot-of-a-shadow-war-in-the-azerbaijan-armenia-conflict/.

[7] Nina Iskandaryan & Hrant Mikaelian, *Media Coverage of the Nagorno-Karabakh conflict in Armenia and Nagorno-Karabakh*, CAUCASUS INST. POL'Y BRIEF 1, 1 (Mar. 2018), https://c-i.am/wp-content/uploads/Policy-brief-media_en_final-1.pdf.

[8] *Id*. at 1-2.

[9] Katy Pearce, *While Armenia and Azerbaijan Fought Over Nagorno-Karabakh, Their Citizens Battled on Social Media*, WASH. POST (Dec. 4, 2020 at 7:45 AM), https://www.washingtonpost.com/politics/2020/12/04/while-armenia-azerbaijan-fought-over-nagorno-karabakh-their-citizens-battled-social-media.

Social media, on one hand, helped to spread old narratives and, on the other, promoted new, exceedingly simplistic narratives.[10] In addition, conspiracy theories and false sensationalist claims spread by actors seeking to disrupt an alleged peace process also spread across social media like wildfire, aided by the reposting by public intellectuals and well-known journalists. Particularly, young people were targeted via short, easily digestible, and effective content, such as memes and short videos, through applications such as Twitter, Instagram, TikTok, and Telegram. They were called to action (e.g., to attend a protest, donate funds, or sign a petition), an effective tactic widely used by marketers to activate individuals and make them feel part of a movement. Political leaders on both sides have wised up to these formats, regularly communicating directly with the public via Facebook Live streaming or increasing communication via Twitter. Through these strategies, heightened and accelerated at times of violent conflict, political leaders in Armenia and Azerbaijan were able to emulate wider global trends of bypassing traditional media. Regime-friendly disinformation and narratives can spread through the population much faster than critical investigative reporting, opinion pieces, or expert analysis, thereby depriving media of its traditional role of mediating and, in some cases, regulating information.

3. *Limitations to Freedom of Speech under Martial Law of Armenia and Azerbaijan*

At the outbreak of the Second Karabakh War, the Republic of Armenia and the Republic of Azerbaijan enacted martial law, permitting restrictions on media freedom. A temporary government decree issued in Armenia prohibited the publication of reports criticizing or questioning the effectiveness of state actions concerning the conflict, leading to the forced takedown of hundreds of articles and fines being imposed upon news outlets.[11] Authorities also blocked websites with Azerbaijani and Turkish

[10] *See ERMES III–Event report media and disinformation in the Nagorno-Karabakh conflict*, *supra* note 3, at 9.

[11] *2021 Country Reports on Human Rights Practices: Armenia*, U.S. DEP'T OF STATE, https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/armenia/.

domain names and the social media app TikTok.[12] Armenian martial law allows authorities to confiscate media outlet equipment and to establish special procedures for journalists' accreditation.[13]

Azerbaijan's parliament also introduced martial law. Internet restrictions and censorship have since increased. Social media platforms, such as Twitter and Facebook, as well as opposition and independent news websites, are blocked. In February 2022, President Aliyev signed a new media law compelling online media outlets to obtain government permission before publishing news articles.[14] In addition to the restriction of speech, observers note that reporting on the Nagorno-Karabakh war is becoming increasingly dangerous for reporters. Even reporters wearing bullet-proof vests clearly marked with the word "Press" were allegedly targeted.[15]

In conclusion, in the Artsakh conflict, we can observe the entire range of propaganda, disinformation, and fake news, in addition to governmental restrictions on media freedom.

III. PROPAGANDA UNDER PUBLIC INTERNATIONAL LAW

This section will examine the regulation of propaganda under public international law. The questions are: Are there any legally binding principles governing the speech of states, such as propaganda, disinformation, or fake news? What exactly do these rules prescribe? How do they set limits to the states' conduct in their international relations?

A. STATE RESPONSIBILITY AND RULES OF ATTRIBUTION

Public International Law is the body of law that governs the relations between sovereign states by establishing certain rights

---

[12] Anahit Hakobyan, *Armenian Digital Communications in Karabakh War of 2020: Critical Discourse Analysis*, Vol. 12 No. 1 J. OF SOCIO. 1, 35 (2021).

[13] ՕՐԵՆՔԸ ՌԱԶՄԱԿԱՆ ԴՐՈՒԹՅԱՆ ԻՐԱՎԱԿԱՆ ՌԵԺԻՄԻ ՄԱՍԻՆ [Law on the Legal Regime of Martial Law], Republic of Arm., No. ՀՕ-42-Ն (Dec. 5, 2006), https://www.arlis.am/documentview.aspx?docid=67147.

[14] Fresh media reforms raise concern [updated], Azerbaijan Internet Watch, January 14, 2021, https://www.az-netwatch.org/news/fresh-media-reforms-raise-concern/

[15] REPORTERS WITHOUT BORDERS, *Covering Nagorno-Karabakh War is Getting Increasingly Dangerous and Complex for Reporters* (Nov. 6, 2020), https://rsf.org/en/covering-nagorno-karabakh-war-getting-increasingly-dangerous-and-complex-reporters.

and obligations of states vis-a-vis other states. Public International Law has distinct features that differentiate it from domestic law. In particular, there is no hierarchical lawmaker. States create public international law by concluding treaties and by creating customary law. Private individuals or private media institutions (not owned or controlled by the government), such as independent legacy media and Social Media platforms or their users, are—as a general rule[16]—not bound by Public International Law; they must only respect the national law of the state on which territory they act or of which they are citizens. In particular, the liability of media platforms and users is governed by national criminal law and media law.

How do we know if an individual acts in a private capacity or on behalf of a state as part of the state? Customary International Law provides for rules of attribution: A state is legally responsible for conduct undertaken by its organs, such as state officials and employees in media institutions directly run by the state. Under certain conditions, state responsibility is also triggered for the conduct of private persons. If private actors, such as private media companies, individual journalists, and bloggers, act in a private capacity, the state can be held responsible if this conduct is attributable to the state. However, attributing reports of private media companies or individuals to states often proves difficult due to strict customary international law rules of attribution. Under the international customary rule reflected in Article 8 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)[17], the conduct of private actors can only be attributed to a state if the state directed or controlled the company's actions, by giving instructions. The "Friendly Relations Declaration," a UN General Assembly resolution that reflects customary international law, stipulates that "no State shall organize, assist, foment, finance, incite or tolerate, subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State."[18] These requirements were further specified by the International Court of Justice (ICJ) in the case of Nicaragua and have since been generally accepted as a necessary requirement of

[16] An exception is international criminal law establishing the direct individual criminal responsibility of individuals for certain "core crimes."
[17] G.A. Res. 56/83, ¶ 8 (Jan. 28, 2002).
[18] G.A. Res. 2625 (XXV), at 123 (Oct. 24, 1970).

attribution.[19] Since this is a high threshold, reports by private news corporations and individuals only trigger state responsibility under international law when it can be shown that the state has actively fostered, encouraged, and influenced reporting to such an extent as to control the contents and the editorial process. In contrast, for example, heavy state funding of the news agency would be per se insufficient for attributing conduct.

Second, Article 11 ARSIWA provides a basis for the attribution of conduct if it is acknowledged and subsequently accepted by a state as its own. However, these requirements are strict, too. The mere approval and endorsement, as well as congratulations, would be insufficient. These requirements have been specified by the International Court of Justice's Judgement in the Teheran Hostages Case.[20] The case was brought before the ICJ by the United States following the occupation of its Embassy in Tehran by a group of Iranian militant students in 1979 and the capture and holding of its diplomatic and consular staff hostage.[21] The ICJ affirmed that Iran had violated obligations owed to the United States under conventions in force between the two countries and rules of general international law and that the violation of these obligations engaged the international responsibility of Iran. The ICJ pointed out that, while the conduct of militants could not be directly attributed to the Iranian State due to the lack of sufficient information, Iran, however, had done nothing to prevent the attack, stop it before it reached its completion, or oblige the militants to withdraw from the premises and release the hostages. The ICJ also noted that after the hostage-taking, certain organs of the Iranian State had endorsed the acts in question and decided to perpetuate them, thus becoming acts of the Iranian State.

---

[19] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v.U.S.), Judgment, 1986 I.C.J. Rep. 14, at 15 (June 27).

[20] United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgement, 1980 I.C.J. Rep. 14, at 3 (May 24).

[21] The case took place in the wake of the takeover of power by radical islamists under Ayatollah Khomeini. Iran's revolution deeply altered that country's relationship with the United States. The deposed Iranian ruler, Mohammad Reza Shah Pahlavi, had been friendly to the U.S. administrations, and this had produced deep suspicion and hostility among Iran's revolutionary leaders. United States diplomats and citizens were held hostage after a group of militarized Iranian college students belonging, who supported the Iranian Revolution, took over the U.S. Embassy in Tehran and took them as hostages. A diplomatic standoff ensued. The hostages were held for 444 days, being released on January 20, 1981.

Due to this high threshold for state responsibility, fake news and disinformation spread by private media companies will, in most cases, not be attributable to a state. However, the spread of information by private individuals or groups of individuals will lead to the responsibility of the state if the state has not acted with due diligence, failing a duty to prevent harmful acts by private individuals. Here, we may look again into customary international law. In the Corfu Channel case, the ICJ affirmed that under customary international law, every State is under an "obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."[22] This no-harm principle has since been further developed in international environmental law, that states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. It is a duty to regulate by national law. In the cyber context, the UN General Assembly urged states to "ensure that their laws and practice eliminate safe havens for those who criminally misuse information technologies."[23] It is controversial whether the principle of due diligence reflects a binding obligation applicable to reports by private media companies and individuals. It is questionable whether the state has a general duty to regulate or prevent all private acts on its territory or, in the case of media activities, a duty to censor private speech and propaganda. Such an obligation can only be derived from special treaties in which the state explicitly undertakes such duties, such as Article 20 ICCPR and Article 4 CERD, as will be explained below. However, there is no general principle of due diligence in international law. Therefore, a state cannot be held legally responsible for all activities of privates within its territory.

B. FREEDOM OF ACTION UNDER PUBLIC INTERNATIONAL LAW (LOTUS PRINCIPLE)

Even though the term propaganda is used by some international treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which provides in Article 20 that "[a]ny propaganda for war shall be prohibited by law" and Article

[22] The Corfu Channel Case (Gr. Brit. and Northern Ir. v. Alb.), Judgment, 1949 I.C.J. Rep., at 4 (Apr. 9).
[23] G.A. Res. 55/63, at 2 (Dec. 4, 2000); G.A. Res. 2106 (XX), ¶ 4 (Dec. 1965).

4 of the International Convention on the Elimination of All Forms of Racial Discrimination, they do not define "propaganda". While some international organs and organizations have proposed some clarifications, there is no uniform understanding of the term. This is not surprising, considering that even domestic legislators struggle to find definitions when introducing anti-"fake news" legislation. [24]

This article argues that the lack of definition does not bar from assessing the legality of such forms of state speech under public international law. This is because sovereign states enjoy a general freedom of action under public international law. This principle has been formulated by the Permanent Court of International Justice (PCIJ) in the Case of the S.S. "Lotus" of 1927.[25] The PCIJ held that states had a wide measure of discretion, which is only limited by the prohibitive rules of international law, and "[r]estrictions on the independence of States cannot... be presumed."[26] It has since become known as the "Lotus principle" and is used as a general departure point for legal arguments under public international law: Sovereign states may act in any manner they wish as long as they do not contravene an explicit prohibition or violate the sovereign rights of other states. It follows from this fundamental assumption that the legality of a certain conduct is primarily measured by the effects of this conduct on the legal rights and interests of other sovereign states. In other words, states enjoy freedom of action unless a conduct infringes the sovereign rights of another sovereign. Applying the Lotus principle to state speech, it can be assumed that offensive speech is permissible as long as it does not violate the legal rights of other states. The following sections will analyze the rules of international law that protect the sovereign rights and legally protected interests of other states and, therefore, set limits to offensive and harmful state speech.

---

[24] *C.f.* Ines Gillich, Udo Fink, *Fake news as a Challenge for Journalistic Standards*, 58 U. Louisville L. Rev. 263 (2019-2020).

[25] In that case, a collision had occurred in the high seas between a French vessel and a Turkish vessel. Victims were Turkish nationals and the alleged offender was French. The question before the ICJ arose whether Turkey violated international law when Turkish courts exercised jurisdiction over a crime committed by a French national, outside Turkey? Does Turkey need to support its assertion of jurisdiction using an existing rule of international law or is the mere absence of a prohibition preventing the exercise of jurisdiction enough?

[26] The S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10 ¶ 44 (Sept. 7).

C. LIMITS TO STATE SPEECH UNDER INTERNATIONAL LAW

As will be shown below, international law limits state speech. Such general rules are derived from the customary law principle of non-intervention, which restricts subversive speech and aims at destabilizing state institutions by influencing nationals of another state towards insurrection, revolt, or civil strife. However, as the non-intervention principle only sets vague standards, recourse must be taken to more precise rules formulated in treaties. Then again, these treaties only cover specific areas of state speech, such as:

- The Law of Diplomatic Relations: limiting verbal defamatory attacks directed against foreign states and their public officials, such as heads of state and diplomats.
- International Broadcasting Law: limiting propaganda spread through radio and television
- International Human Rights Law: limiting propaganda for war, incitement to genocide, and incitement to racial discrimination
- International Humanitarian Law: limiting state conduct in armed conflicts

1. *The Principle of Non-Intervention*

Non-intervention in the domestic affairs of another state is one of the fundamental principles of customary international law. It is also derived from Article 2 (1) of the UN Charter, which incorporates the principle of sovereign equality of all member states. The basic assumption is that if all states are by law considered to be sovereign and equal, no state may intervene or interfere in the domestic affairs of the other. In 1970, the UN General Assembly adopted Resolution 2625, "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States" (so-called Friendly-Relations-Declaration).[27] The Declaration specifies that no state has the right

[27] Although resolutions passed by the UN General Assembly do not have legally binding force, this resolution was cast among all UN Member States without any negative vote (in consensus) and therefore indicates *opinio iuris*, an element required to prove the existence of a rule of customary international law.

"to intervene, directly or indirectly, for any reason whatever, in the international or external affairs of any other State . . . armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law." In addition to the prohibition of interventions through military means, it also forbids subversive intervention using propaganda by one state to destabilize another state, its nationals, and institutions. To qualify as prohibited intervention, the conduct must pass the threshold of coercion. While for example, economic pressure is regarded as a legitimate means of international relations and thus considered lawful, whereas state practice concerning propaganda is ambivalent.[28] Mere criticism of the internal politics of another state, be it biased or not, does not amount to an illegal intervention into the internal affairs. It has been suggested that disinformation and false news, planted covertly by a state without revealing the official and original source, would indicate a violation of the principles of non-intervention. However, the line between permissible political pressure and impermissible coercion is blurry, as neither state practice nor doctrine has yet developed convincing criteria for proper assessment. Rather, a cautious stance should be taken: The threshold of illegal intervention should not be set too low if this prohibition is to be taken seriously at all.

2. *Protection of the Dignity of Heads of State and Diplomatic Relations*

Customary international law not only requires states to refrain from offensive or defamatory speech directed toward foreign heads of state but also imposes positive obligations of prevention regarding possible acts by individuals.[29] The state against which the attacks are directed has a right to protest and to demand appropriate reparation, which may include a formal apology. It is not clear whether this positive obligation would also amount to an obligation to provide for criminal sanctions for

[28] Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT'L LAW 345, at 374 (2009).
[29] Case concerning Certain Questions of Mutual Assistance in Criminal Matters (Djib. v Fr.), Judgment, 2008 I.C.J. Rep. 177, ¶ 174 (June 4).

defamatory attacks on foreign representatives.[30] While some states, such as Germany, provide for a special offense of the insult or defamation of the head of state under their domestic criminal law,[31] other states have abolished similar provisions.[32]
International law protects diplomatic relations as well. These rules are codified in the Vienna Convention on Diplomatic Relations (1961).[33] Article 29 of the Vienna Convention requires the receiving state to treat diplomatic agents "with due respect and [to] take all appropriate steps to prevent any attack on his person, freedom or dignity." Article 1 (1) (b) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents[34], includes the "dignity" of a state representative or official as a protected asset.

However, two aspects impeding the effectiveness of such rules remain: First, there is a lack of definitive criteria as to when the dignity is violated and second, the permissible countermeasures are limited to the field of diplomatic relations.

3. *International Broadcasting Law*

One area in which early attempts have been made further to specify the principle of non-intervention by an international agreement is broadcasting. Radio broadcasting emerged in the early 20th century for military purposes. After WWI, commercial radio broadcasting began in the 1920s and became an important mass medium for entertainment and news. Since radio transmissions and frequencies do not stop at borders, broadcasting content could be highly problematic for other states. For these reasons, the International Convention Concerning the Use of

---

[30] *Cf.* Alexander Heinze, *The defamation of foreign state leaders in times of globalized media and growing nationalism*, 9 J. Int'l Media & Ent. Law 33, 35 (2020) (discussing the existence of a Customary International Law norm to criminalize defamatory attacks on foreign representatives); De Brabandere, *supra* note 1 (arguing that "There is no obligation for States to take positive action to prevent or punish defamatory conduct and acts of individuals other than State officials or representatives").

[31] *See e.g.* Germany, Article 103 Criminal Code.
[32] Since the 1990s, Hungary (1994), the Czech Republic (1998) Belgium 2005, France (2004) and Romania (2014) have removed the offence from their domestic law.
[33] 500 U.N.T.S. 95.
[34] 1035 U.N.T.S. 167.

Broadcasting in the Cause of Peace (Broadcasting Convention) was concluded in 1936 among the member states of the League of Nations.[35] According to Article 1, states are required to undertake methods that prohibit the broadcasting of any transmission which incites the population of another territory to commit acts incompatible with the internal order or the security of that territory. The obligation to control propaganda concerns propaganda originating from within the state's territory, regardless of the private or public origin of the message. Under Article 3 of the Convention, the Parties "mutually undertake to prohibit and, if occasion arises, to stop without delay within their respective territories any transmission likely to harm good international understanding by statements the incorrectness of which is or ought to be known to the persons responsible for the broadcast." The Convention also establishes a duty to fact-check information before broadcasting. Article 4 establishes a due diligence obligation by stating that the Parties "mutually undertake to ensure . . . that stations within their respective territories shall broadcast information concerning international relations, the accuracy of which shall have been verified—and that by all means within their power—by the persons responsible for broadcasting the information." With respect to private broadcasters, under Article 6, the member states "mutually undertake to include appropriate clauses for the guidance of any autonomous broadcasting organizations, either in the constitutive charter of a national institution, or in the conditions imposed upon a concessionary company, or in the rules applicable to other private concerns, and to take the necessary measures to ensure the application of theses clauses."

While the Broadcasting Convention is still in force today, and there has since been no comparable attempt to regulate other modern forms of communication by a multilateral treaty, its practical effects are limited. Many Western states, such as the Netherlands, France, Australia, and the United Kingdom, denounced the Convention during the Cold War. As the self-declared legal continuator to the Union of Soviet Socialist Republics (USSR), the Russian Federation is a party to the

[35] *see* 186 LNTS 301. *see also* SUPPLEMENT: OFFICIAL DOCUMENTS, 32 No. 3 AM J. INT'L LAW 1, 113-120 (1938).

Broadcasting Convention. At the same time, e.g., Armenia and Azerbaijan, both successor states of the former Soviet Union, have not notified the depository of their intention to be bound, and therefore are not parties to the Convention. [36]

The accession to the Convention by the Soviet Union and its call on other socialist states to follow suit (such as the former Czechoslovakia, the German Democratic Republic, and Hungary) had a symbolic character. The accession to the Broadcast Conventions was motivated by the Soviet Union's intent to improve its legal position against Western broadcasts. In particular, the Soviet Union aimed to ward off outside interference by Western radio stations broadcasting in Russian, such as Radio Free Europe, interpreting the principle of non-intervention broadly and accusing Western states of interfering in the internal affairs of socialist states.[37] It was also driven against the backdrop of Western policy, promoting the principle of free flow of information.

There is good reason to believe that Russia's disinformation campaign and war propaganda relating to the war in Ukraine violate the Broadcasting Convention. Although Ukraine is not a party to the Convention, several states that have condemned Russia's military actions in Ukraine are parties thereto, such as Norway, Finland, Estonia, Denmark, Luxembourg, Latvia, and Bulgaria, and therefore could be regarded as harmed by Russian disinformation. However, they cannot bring a claim before the ICJ. Even though Article 7 of the Convention includes a compromissory clause granting the Permanent Court of International Justice (PCIJ) and now the ICJ (see Article 37 of the ICJ Statute) jurisdiction over disputes concerning the interpretation or application of the Convention, the USSR had entered a reservation to the jurisdiction clause.

4. *The Clash of Principles: Freedom of Information vs. Prior Consent*

The controversies over the Broadcasting Convention display that the transmission of ideas and information across

---

[36] *See generaly*: Paul R. Williams, *The Treaty Obligations of the Successor States of the Former Soviet Union, Yogoslavia, and Czechoslovakia: Do They Continue in Force*, 23 DENV. J. INT'L & POL'Y 1 (1994).

[37] Simo Mikkonen, *To Control the World's Information Flows: Soviet Cold War Broadcasting*, in A. BADENOCH, A. FICKERS, & C. HENRICH-FRANKE (EDS.), AIRY CURTAINS IN THE EUROPEAN ETHER: BROADCASTING AND THE COLD WAR 241, 242-43 (2013).

borders is an area where the interests of Western and Eastern states clashed during the Cold War and continue to clash From our Western perspective, we are easily inclined to believe that the free flow of information and the exchange of opinions is a necessary corollary to democracy and the universality of human rights. Yet, the conception of a free flow of information has become a dilemma for Eastern states, pursuing a Marxist-Leninist policy with a trend to monopolize information at the state level. They claimed that Western broadcasting across borders would be an illegal intervention into their domestic affairs and they aimed to make the entry of wireless signals into their territory dependent on their prior consent.

This intrinsic tension between freedom of information and concerns for national sovereignty is manifested in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). While Article 19 (2) ICCPR provides for freedom of expression in a broad sense, para. 3 allows for far-reaching restrictions, such as security interests, which leave a wide margin of appreciation to the states when restricting this right.

One instrument, that aims to strike the balance between these opposing interests, is the Constitution of the International Telecommunication Union (ITU), an international treaty to coordinate international cross-border telecommunications, which has been signed and ratified almost universally. Article 33 provides that "Member States recognize the right of the public to correspond by means of the international service of public correspondence." In contrast, article 34 provides the opposite principle by stating that "Member States reserve the right to stop, in accordance with their national law, the transmission of any private telegram which may appear dangerous to the security of the State or contrary to its laws, to public order or to decency, provided that they immediately notify the office of origin of the stoppage of any such telegram or any part thereof, except when such notification may appear dangerous to the security of the State." According to Article 35, "Each Member State reserves the right to suspend the international telecommunication service, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that it immediately notifies such action to each of the other Member States through the Secretary-General." Under Article 36 "Member States accept no responsibility towards users of the international telecommunication services, particularly as regards claims for damages." This shows that there is no consensus on the range of

the principle of non-intervention when it comes to dissemination of information and opinions across state borders.

It must be recalled that while it was mainly Western broadcasting stations, that aimed at influencing public opinion in socialist states during the Cold War[38], it is vice versa today. In light of the massive disinformation campaign by the Russian Federation, it is the Western states that now, in turn, attempt to restrict the transmission of information into their territory, thus restricting the free flow of information pointing to the principle of non-intervention and the deteriorating effects of fake news and disinformation campaigns on national security.

5. *International Human Rights Law*

Since early attempts to regulate state speech have failed, states have taken a human rights-centered approach to provide at least some clarifications. This approach differs from the traditional, state-centered approach based on reciprocity because human rights set out obligations owned not vis-a-vis a specific state, but they affect the interests of all parties to a human rights treaty (erga omnes inter partes).

Human rights obligations do not generally cease to apply in situations of an (international or non-international) armed conflict, but can only be temporarily suspended under the derogation clauses in some human rights treaties.[39] These derogation clauses also permit the temporary restriction of media freedoms, provided that they do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin' (Article 4 (1) ICCPR) and "provided that such measures are not inconsistent with its other obligations under international law" (Article 15 (1) ECHR).

Armenia has made use of derogation clauses twice. On 1 March 2008, a 20-day state of emergency was declared. Among other measures, restrictions were imposed on the media in the context of the 2008 massive post-election protests. On 20 March

[38] Nicholas J. Schlosser, *Cold War on the Airwaves: The Radio Propaganda War against East Germany* 1, 57–58, 73–105.

[39] *See* Article 15 para. 1 ECHR providing that in "time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." A similar derogation clause is provided for in article 4 ICCPR.

2020, Armenia again derogated from certain human rights obligations, including the right of assembly under Article 21 ICCPR and Article 11 ECHR), on grounds of a response to the global outbreak and spread of COVID-19 virus. On 16 September 2020, Armenia withdrew all derogations and returned to full implementation of the Covenant.

6. *Freedom of Expression and Information*

For Armenia and Azerbaijan, human rights obligations stem from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Article 19 (2) ICCPR declares that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Similarly, Article 10 (1) ECHR states that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." The ECtHR has explained that all member states of the ECHR have the duty to grant conditions under which democratic processes conform with the Convention. Their obligation to enable a free flow of information makes it imperative for member states to create legal and factual conditions to freely enjoy these rights and to minimize interference by public officials and privates.[40] The ECtHR has also emphasized that freedom of information is applicable "not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any sector of the population."[41]

The human rights regime established under the ECHR is more effective than the ICCPR, since it provides for the obligatory and legally binding jurisdiction of the European Court of Human Rights, whereas the implementations of the obligations under the ICCPR is monitored by the Human Rights Committee for parties of AP I, whose decisions are not legally binding.

The ECtHR has been concerned with various individual complaints against Armenia. Decisions include findings that Armenia has

[40] Cf. Matthias Klatt, *Positive Obligations under the European Convention on Human Rights*, 71 ZAÖRV 691 (2011).

[41] Handyside v. United Kingdom (1979-80) 1 EHRR 737, para. 49; Lingens v. Austria (1986) 8 EHRR 407, para. 41.

violated the right to freedom of expression under Article 10 ECHR. For example, in Dareskizb Ltd v. Armenia[42] actions by state authorities taken during a state of emergency following a presidential election in 2008 were challenged by the applicant, a media company, that was prevented from publishing its newspaper. The ECtHR found that the restriction on publication had had no purpose other than to limit criticism of the Government and had thus gone against the core of the right to freedom of expression as protected under the Convention. In Meltex Ltd and Mesrop Movsesyan v. Armenia[43], an independent broadcasting company was repeatedly refused broadcasting licenses without giving any reasons. The ECtHR found that the interference with Meltex's freedom to impart information and ideas, namely having been refused a broadcasting license on seven separate occasions, had not met the requirement of lawfulness under the European Convention, in violation of Article 10 ECHR.

The ECtHR also found Azerbaijan to have violated the right to freedom of expression in numerous cases.[44] However, it must be considered that freedom of expression and freedom of information are no absolute human rights guarantees but are subject to limitations. Article 19 (3) ICCPR authorizes certain restrictions, which are provided by law and are necessary. According to Article 10 (2) ECHR, freedom of expression can be restricted when it is "necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary". These broadly worded exception clauses aim to strike a balance between the free flow of information and ideas and, the legitimate security interests and other interests of the states.

---

[42] Dareskizb Ltd v. Armenia, Appl. No. 61737/08 (Eur. Ct. H.R. Sept. 21, 2021)

[43] Meltex Ltd & Movsesyan v Armenia, Appl. No. 32283/04 (Eur. Ct. H.R. June 17, 2008).

[44] *See e.g*. Khadija Ismayilova v. Azerbaijan, Appl. Nos. 65286/13 and 57270/14 (Eur. Ct. H.R. April 10, 2019) concerning an alleged smear campaign against a well-known journalist, who was being accused of an anti-government bias and immoral behavior); Mahmudov and Agazade v. Azerbaijan, Appl. No. 35877/04 (Eur. Ct. H.R. March 18, 2009) (concerning a criminal conviction of a journalist in an unfair trial for several of his published statements).

7. *Propaganda for War and Hate Speech*

In addition to the individual guarantee of freedom of expression and information, the ICCPR states in Article 20 para. 1 that "Any propaganda for war shall be prohibited by law" and in para. 2 that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." This provision, which has no counterpart in the ECHR, seems rather odd at first sight, as it contains not a subjective human right, but formulates an objective requirement directed at the states. The concept of "war propaganda" was introduced to the debates on the drafting of the ICCPR by the Soviet Union as a ground for permissible restriction on the right to freedom of expression under Article 19 (3) (as well as justifying restriction under Articles 18(3), 21 or 22(2)).[45] Thus, by virtue of Article 20, states are under an obligation to prohibit war propaganda under domestic law. The prohibition of propaganda for war should not only cover direct incitement to war but also the antecedent form of speech that enabled such incitement to be effective, in particular "the repeated and insistent expression of an opinion for the purpose of creating a climate of hatred and lack of understanding between the peoples of two or more countries, in order to bring them eventually to armed conflict."[46] Therefore, Article 20(2) mandates that any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

At first, some Western states opposed this provision, because they feared that the Soviet Bloc states would exploit Article 20 ICCPR to undermine the right to free speech. They had good reason, because, as explained above, the term "propaganda for war" is rather vague and no definition or uniform use in other international norms had been developed.[47] Despite that, the

---

[45]Paul M. Taylor, A Commentary On The International Covenants Of Civil And Political Rights Comment on Article 20, at 580.

[46] UN GAOR, 16th Sess., 1079th mtg, 3rd Comm., at 97, U.N. Doc. E/2573 (Oct. 20,1961).

[47] *See* G.A. Res 2106 (XX), at 3 (Dec. 21 1965). (condemning "all propaganda and all organizations…which attempt to justify or promote racial hatred and discrimination in any form' asks States Parties to 'declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin"), and Article 13 (5) American Convention on Human Rights providing that "Any propaganda for war and any advocacy of national, racial,

provision was finally included in the ICCPR to meet the interests of newly independent states associated with the Non-Aligned Movement (NAM) that such a provision was necessary to ensure their protection from the superior military, economic, and cultural capabilities of the Cold War superpowers.[48] However, upon ratifying the ICCPR, fifteen states declared reservations to Article 20 ICCPR.[49] The common thread to these reservations is that the provision is unnecessary given pre-existing legislation on public order offenses and that it constitutes an undue restraint on freedom of expression. These reservations impede the effective implementation of the prohibition of war propaganda.

The effectiveness of this provision is also diminished because the drafting history of the provision calls for a restrictive interpretation of propaganda. This provision was included in the ICCPR due to the experiences of World War II, where such propaganda was widely acknowledged as having played a fundamental role in the consolidation of Nazi power in Germany, the subsequent wars of aggression, and the Holocaust.[50] In light of this, it is has been suggested that the term "propaganda" has a particular meaning, implying an "intentional, well-aimed influencing of individuals by employing various channels of communication to disseminate, above all, incorrect or exaggerated allegations of fact . . . negative or simplistic value judgments whose intensity is at least comparable with that of provocation, instigation or incitement."[51]

The Human Rights Committee's General Comment 11 distinguishes between acts of aggression, permissible defensive conflict, and other assertions of legitimate rights under the Covenant. It explains that Article 20(1) "extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations," but does "not prohibit advocacy of the sovereign right of self-

---

or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

[48] *See generally* Paul M. Taylor, supra note 50

[49] United Nations Human Rights Office of the High Commissioner, *Status of* Ratification Interactive Dashboard – International Covenant on Civil and Political rights, https://indicators.ohchr.org/

[50] Michael G Kearney, *Propaganda for War, Prohibition of, in* Max Planck Encyclopedias of Int'l Law (Anne Peters & Rüdiger Wolfrum eds., 2009).

[51] Manfred Nowak, U.N. Covenant On Civil And Political Rights - CCPR COMMENTARY 205, at 472–3

defense or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations."[52] It follows from this, that the spread of propaganda in the sense of Article 20, must be linked with an act of aggression or a breach of the peace in violation of the principles of the UN Charter. Only such a strict interpretation explains that the Human Rights Committee has been reluctant to invoke Article 20, even in such a clear instance as in the case of Holocaust denial in Faurrison v. France, where the Human Rights Committee confined its consideration only to Article 19 (3) without engaging with the state's argument that the restriction was mandated by Article 20.[53] With Russia's war of aggression against Ukraine, which is accompanied by an aggressive propaganda and misinformation campaign, aggressive rhetoric against Ukraine, and Western states supporting Ukraine in its self-defense, this provision may become relevant again.

8. *Incitement to Genocide*

One extreme form of hate speech is incitement to genocide. One of the many effects of words is not only to cause psychological harm, but they can also directly or indirectly incite physical violence. Empirical studies suggest that propaganda before and during armed conflicts is likely to have deteriorating effects on society, as it may lead to the vilification of certain groups and even encourage violence against them.[54] The history of hate propaganda and violent speech in international conflicts begins with the Nuremberg Trials of German Major War Criminals in 1946.[55]

---

[52] Human Rights Committee, General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred, at 1 (July 29, 1983).

[53] *Faurisson v. France*, CCPR/C/58/D/550/1993, Judgement, 9.6 (Nov. 8 1996).

[54] Special Rapporteur on freedom of opinion and expression, U.N. Doc A/77/288, at 4 (2022).

[55] *Trial of German Major War Criminals*, 41 AJIL 172, Judgment, 122 (30 Sept. and Oct. 1946). (The Tribunal convicted Julius Streicher, the editor of a weekly newspaper called *Der* Stürmer, in which he had advocated the destruction of the Jewish people, for 'incitement to murder and extermination', which in the Tribunal's view constituted a crime against humanity. Another trial was lead against Hans Fritzsche, the head of the German Radio Division of the Ministry of Propaganda. The accused, however, was acquitted, because in the Tribunal's view his anti-Semitic propaganda did not urge persecution or extermination of Jews.).

Historically, the crime of incitement to genocide has also played a significant role in the commission of genocide against the Armenian people. Many parliaments, such as the German *Bundestag*, have passed a resolution explicitly recognizing and condemning the Armenian genocide that took place in 1915 in the Ottoman Empire, a move that has been criticized by the Republic of Türkiye and the Republic of Azerbaijan.[56] Drawing on these historical experiences, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948.[57] Article III of the Convention makes "direct and public incitement to commit genocide" a crime under this Convention. Article III also condemns "complicity in genocide", which can also cover incitement to genocide.

Incitement to genocide also leads to individual criminal responsibility under international criminal law. It was included in the Statute of the International Criminal Tribunal for the Former Yugoslavia (Article 4 (3) (c)), the Statute of the International Criminal Tribunal for Rwanda (Article 2 (3) c)) and in the Statute of the International Criminal Court.[58] Article 25 (3) (e) of the ICC Statute provides that " . . . a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person . . . directly and publicly incites others to commit genocide." Most importantly, incitement to commit genocide is punishable as a separate crime, irrelevant of whether such propaganda is followed by the actual commission of genocide, punishable as such if the author had the intent to directly and publicly incite others to commit genocide, even if no act of genocide has resulted from the act(s) of incitement.[59] The ICTR Appeals Chamber noted that "there is a difference between hate speech in general (or inciting discrimination or violence) and direct and public incitement to commit genocide. Direct incitement to commit genocide assumes that the speech is a direct appeal to

[56] The Bundestag declared that "the annihilation of the Armenians in the Ottoman Empire during the First World War was the largest and most momentous catastrophe in the multi-thousand-year history of the Armenian people." and acknowledged that the "German Reich, as the main military ally of the Ottoman Empire, was also deeply involved in these processes", https://dserver.bundestag.de/btd/18/086/1808613.pdf (Ger.).

[57] Convention On The Prevention And Punishment Of The Crime Of Genocide, Jan. 12 1951, 78 U.N.T.S. 277.

[58] 2187 U.N.T.S. 90.

[59] Prosecutor v. Nahimana, ICTR-99-52-A, Judgement, ¶ 677–78 (28 November 2007).

commit an act [of genocide]; it has to be more than a mere vague or indirect suggestion."[60]

Sadly, such extreme hate speech has not remained a phenomenon of a long-bygone era. The revival of international awareness began in the 1990s when during the Rwandan civil war (1990 to 1994), a Rwandan radio station, Radio Télévision Libre des Mille Collines (RTLM), acted as a source for racially motivated propaganda and incitement of hatred and violence against parts of the civilian population, allowing the genocide against Tutsis in Rwanda to occur.

The case of Rwanda shows that modern forms of propaganda are not necessarily cross-border or directed against a foreign state or its officials, but also occur within a state against its citizens. These cases exemplify the dangers propaganda and disinformation campaigns, especially when they are state-orchestrated, can lead to. The common theme of such forms of speech is that some kind of utopia is projected that would be achieved by the elimination of members of the target or victim group. The propagandists often seek to convince their audience of the need to 'purify' the community or 'defend' themselves against the enemy.

9. *Incitement and Promotion of Racial Hatred and Discrimination*

While there have been no international judicial proceedings of claims based on incitement to genocide in the conflict between Armenia and Azerbaijan (although in the media such allegations are being raised), proceedings have been instituted before the International Court of Justice concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The convention imposes obligations on state parties with regard to the elimination of racial discrimination in all its forms and manifestations. Some commentators view the convention as a stop-gap measure to prevent even worse types of measures, such as genocide.

The CERD is a rather peculiar instrument, as it lacks a number of features other international human rights treaties: the obligations undertaken by the state parties to the CERD only apply to their own citizens. In this respect, the CERD is an instrument of minority protection and, while being so, it perfectly fits the

[60] *Id.* ¶ 692.

situation of Artsakh, an area that is part of Azerbaijan, but populated with approx. 120,000 citizens of Armenian ethnicity. Under the CERD, the state parties undertake not only to prohibit and eliminate racial discrimination in all its forms but to also forbid all state measures of propaganda and incitement to acts that would violate these standards. In particular, Article 4 CERD states that:

> States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination . . . " and they "(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

More importantly, the CERD contains a jurisdictional clause in Article 22 providing for the jurisdiction of the ICJ. Thus, the real importance of the CERD is not that it creates substantive rights for the state's parties, but rather that it provides a basis for jurisdiction. A State party to CERD may invoke the rights set out in the Convention to the extent that the acts complained of can constitute acts of racial discrimination as defined in Article 1 of the Convention.

Relying on this jurisdictional clause, Armenia initiated proceedings against Azerbaijan before the ICJ twice. The first proceeding was filed by Armenia against Azerbaijan on 16 September 2021. Azerbaijan responded by filing its own Application against Armenia on 23 September 2021 before the ICJ. Both states claim that the other has breached its obligations under Articles 2–7 of CERD. In its application, Armenia states that "[f]or

decades, Azerbaijan has subjected Armenians to racial discrimination" and that, "[a]s a result of this State-sponsored policy of Armenian hatred, Armenians have been subjected to systemic discrimination, mass killings, torture and other abuse." Armenia further states that Azerbaijan has acted and continues to act in violation of its obligations under the CERD and asserts that Azerbaijan bears responsibility, inter alia, for glorifying, rewarding and condoning acts of racism; for inciting racial hatred, giving as an example, mannequins depicting Armenian soldiers in a degrading way at the "Military Trophies Park" which opened in Baku in the aftermath of the 2020 Conflict; for facilitating, tolerating and failing to punish and prevent hate speech.[61] The ICJ considered plausible at least some rights were allegedly violated through incitement and promotion of racial hatred and discrimination against persons of Armenian national or ethnic origin by high-ranking officials of Azerbaijan and through vandalism and desecration affecting Armenian cultural heritage. In view of the ICJ, acts prohibited under Article 4 of CERD, such as propaganda promoting racial hatred and incitement to racial discrimination or to acts of violence against any group of persons based on their national or ethnic origin can generate a pervasive racially charged environment within society. This holds particularly true when rhetoric espousing racial discrimination is employed by high-ranking officials of the state. A situation such as this one may have serious damaging effects on individuals belonging to the protected group. The ICJ thus ordered Azerbaijan i.e., to "[t]ake all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin."[62]

On December 28, 2022, Armenia filed another request for the indication of provisional measures. The background is that, since 12 December 2022, the Lachin corridor, which is the only route whereby Armenia can provide food, fuel, and medicine supplies to Nagorno-Karabakh, has been blocked by persons claiming to be environmental activists. The blockade endangered the lives of the people living in Artsakh. By its application,

---

[61] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Order, 180 I.C.J. 369, ¶ 22 (December 7).
[62] *Id.* ¶ 98(1)(b) at 393.

Armenia asked the Court to order Azerbaijan to "cease its orchestration and support of the alleged 'protests' blocking uninterrupted free movement along the Lachin Corridor in both directions," to "ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions" and to "fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh."[63] Azerbaijan denies to have orchestrated these blockades, explaining that the activists are stating a legitimate protest against illegal mining activity. Armenia on the other hand contends that Azerbaijan orchestrated these blockades, preventing anyone and anything from entering or exiting, designed to allow "ethnic cleansing."[64] The ICJ concluded that the conditions for the indication of provisional measures were met. It ordered Azerbaijan to take all measures at its disposal to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions.[65]

These cases under the CERD, however, are only an incomplete legal victory of Armenia. It must be noted, that the ICJ Court was not called upon to establish the existence of breaches of CERD, but only to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. A final decision has yet to be made by the ICJ. Moreover, it is doubtful whether Azerbaijan will comply with this order. The impact of the blockade persists to this date and has a serious detrimental impact on the health and lives of individuals.

These cases are only the latest of a growing number of disputes brought before the ICJ based on the CERD. Other cases include disputes between Georgia v. Russian Federation, Ukraine v. Russian Federation, and Qatar v. UAE. The peculiarity of all these cases, including those discussed here, concerning the conflict between Armenia and Azerbaijan, is that their underlying issues do not only concern racial discrimination as prohibited under the CERD *per se* but, for instance, territorial sovereignty, international humanitarian law, and restrictions on trade and flow of persons. States were criticized for trying to fit their claims within the legal

[63] Forms of Racial Discrimination (Armenia v. Azerbaijan), Order, 180 I.C.J. 5, ¶ 22 (September 22), https://www.icj-cij.org/sites/default/files/case-related/180/180-20230222-ORD-01-00-EN.pdf.
[64] *Id.* ¶ 30 at 7.
[65] *Id.* ¶ 22 at 5.

framework of CERD to use the jurisdictional clause to bring a case to the ICJ.[66]

In fact, over the past two decades, many states have brought cases based on the jurisdictional clause under CERD, even though the disputes to which those cases related hardly concerned racial discrimination as such.[67] The CERD, therefore, serves as a door opener to bring claims before the ICJ. While this is certainly beneficial for a peaceful dispute resolution, on the other hand, it has also raised fears regarding the willingness of states to further participate in the CERD as it has the potential to undermine the credibility of a multilateral convention and the reliance on its compromissory clause (Article 22) for genuine claims relating to racial discrimination. States might be inclined to withdraw from the Convention if it becomes evident, that others may bring claims only for the purpose of creating ICJ cases which are unrelated to racial discrimination.

10. *International Humanitarian Law*

Since time immemorial, parties to a conflict have made use of methods of psychological warfare. Psychological warfare is traditionally perceived to be conducted through the dissemination

---

[66] This has also been noted by Judge Yusuf concerning the Order of the ICJ of 22 February 2023 in the dispute between Armenia and Azerbaijan: "My objection relates to the continued misuse of the compromissory clause of CERD as a basis of jurisdiction of the Court with respect to alleged acts and omissions which do not fall within the provisions of that Convention. A regrettable tendency seems to have developed, whereby any State that fails to find a valid basis of jurisdiction of the Court for its claims, but still wishes to bring a case before it, tries to stuff those claims into the framework of CERD." Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Order, 180 I.C.J. 369, ¶ 67 (December 7), Declaration of Judge Yusuf, Document Number 180-20230222-ORD-01-01-EN, https://www.icj-cij.org/sites/default/files/case-related/180/180-20230222-ord-01-01-en.pdf.

[67] *See Cf.* Lawrence Hill-Cawthorne, *International Litigation And The Disaggregation Of Disputes: Ukraine/Russia As A Case Study*, 72 Int'l Compar. L. Q. 779, 779 – 815 (2019).On this problem cf. Lawrence Hill-Cawthorne, INTERNATIONAL LITIGATION AND THE DISAGGREGATION OF DISPUTES: UKRAINE/RUSSIA AS A CASE STUDY, 2019, https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/international-litigation-and-the-disaggregation-of-disputes-ukrainerussia-as-a-case-study/4A7FA031628BB64FD19FDE98EB5822DE (last accessed 23 February 2023).

of false rumors and the spreading of misinformation or disinformation to create a distorted or even completely false picture of the truth. It serves several objectives: To undermine the adversary's will and military discipline, to alienate and isolate the adversary from his allies, to strengthen the fighting morale among one's own troops and allies, as well as to generate support among its own population, among others. During the past years, psychological warfare has been conducted increasingly in the cyber domain as well. In addition, the advent of mass media has allowed this method of warfare to be effectively developed and applied broadly. Today, it is mainly the Internet that is used to spread false information via social media.

Psychological warfare is not per se illegal under International Humanitarian Law. Ruses of war are permissible, as reflected under Article 24 of Hague Regulations and Article 37 (2) of the Geneva Conventions Additional Protocol I (1977),[68] as long as there is no resort to perfidious methods of warfare or no other compelling violations of international law.

The line to perfidy would be crossed if the other party was misled into believing that it was protected by international law (e.g., a humanitarian agreement to cease fighting with the intention of surprising the enemy who relied on it). Beyond that, there are no criteria that help to distinguish ruses of war and illegal perfidious acts in armed conflicts. State practice shows, for example, that one of the most common methods of psychological warfare—the dissemination of propaganda through the use of aircraft—is considered legal. Also, the spread of false information regarding flights and movement units and the transmission of false or misleading messages via radio/telephone/electronic/internet

68

Article 37 (2) AP I states: Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 37, ¶ 2, Dec. 12, 1977, 1125 U.N.T.S. 3.

communication are included in many national military handbooks as permissible ruses of war.[69]

The fine line of division between the legality and illegality of the method of warfare must be determined by the protection of other goods under international law. For example, as stated above, this includes incitement to genocide. A recent and highly problematic example concerns the war in Ukraine. Ukraine's Ministry of Internal Affairs posted videos on media platforms and social media sites of what appear to be captured Russian soldiers giving testimonials to interrogators about the misinformation they had been hearing from the Kremlin justifying the war. In addition, pictures were circulating on the Internet that allegedly showed Russian soldiers in Ukrainian captivity. For example, one Russian soldier is being served tea, another is crying on the phone while speaking with his mother, and another is asking for forgiveness in front of the camera. The aim of this media footage seems clear: To demonstrate that the soldiers have been let down by their own state and that they show signs of regret. However, using prisoners of war for such purposes violates International Humanitarian Law since Article 13 of the Third Geneva Convention clearly expresses, that "prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity." Moreover, Article 14 of Geneva Convention III provides that prisoners of war are "entitled in all circumstances to respect for their person and honor."

It is clear that displaying degrading pictures, such as the torture images from the U.S. prison of Abu Ghraib during the Iraq War, is illegal. However, there are good reasons to believe that Ukraine has also crossed a line by showing images of captured soldiers if it can be proven that the captured soldiers were forced to participate in this media "circus".

Since states enjoy wide discretion as to the use of psychological methods of warfare, it is essential to rely on neutral and factually correct news. However, as reporting from conflict areas entails risks for journalists, their protection is important. Protecting news media workers is not only a matter of human rights law, but it is also a matter of international humanitarian law when such reporting takes place in an armed conflict.

The Geneva Convention relative to the Treatment of Prisoners of War of 1949 (Geneva Convention III) defines war

[69] Kalliopi Chainoglou, *Psychological Warfare, in* MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (Anne Peters & Rüdiger Wolfrum eds., 2016).

correspondents as persons "who accompany the armed forces without actually being members thereof" (Article 4 A (4)). War correspondents and journalists are entitled to the protection granted to civilians. This means they may not be the object of attacks. Violations amount to a grave breach of international humanitarian law (Art. 85.3 (a) Protocol I) and can, under qualified circumstances, be prosecuted as war crimes by the International Criminal Court (ICC) (Art. 8.2 (b) (i) ICC Statute).

Of course, respect for this rule requires that a journalist in a conflict area must be identifiable as such, but this may not always be easy in operational zones, in particular in the case of "embedded journalists", who accompany military units. The suggestion to introduce a special sign to identify news media workers (a 'P' or 'Press') has been controversially discussed. Journalist organizations have expressed their fear that such a sign may attract enemy fire rather than protect them.[70]

Article 79 of the Protocol Additional to the Geneva Conventions of 1977 extends protection to all "journalists engaged in dangerous professional missions in areas of armed conflict." This provision covers all persons associated with media work who are on professional assignment in an operational zone, in particular journalists/reporters, cameramen, photographers, and technical support personnel. Such media workers should also be given an identity card attesting to their assignment as proof of their formal identification as journalists.

Civilians may lose protection if they directly take part in hostilities. This includes e.g., violently opposing arrest, taking up arms other than for self-defense, or resorting to violence in any other way. With respect to journalists in conflict zones, mere interviewing people, taking notes, or filming with a TV camera are not hostile acts. But could journalists' reports published in media in support of one party to a conflict be qualified as an act of violence and thus as 'active participation' in the conflict? Such a question was dealt with by the International Criminal Tribunal for Rwanda (ICTR) in the case *Nahimana et al.*, where the ICTR evaluated the criminal responsibility of the founders of the Radio Télévision Libre des Mille Collines (RTLM) and of the editor-in-chief of the newspaper *Kangura* with regard to the incrimination of the Tutsis. In 2003, the trial chamber found the defendants guilty on multiple counts of genocide, incitement to genocide, and crimes

[70] Hans-Peter Gasser, *War, Protection of News Media Workers, in* MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (Anne Peters & Rüdiger Wolfrum eds., 2015).

against humanity, namely "persecution on political grounds of an ethnic character."[71] The significance of the judgments for mass media was that the persons concerned were punished precisely because of their strategic role and control exercised in the respective media organizations (newspaper editor, broadcast executive). The ICTR, therefore, concluded that spreading hate propaganda may qualify as active participation in the conflict.

If journalists or media facilities are closely involved in disseminating other propaganda during an armed conflict, it is questionable at what point they may become legitimate military targets under International Humanitarian Law. A prominent example is the bombing of the Belgrade Television and Radio Station (RTS) building by NATO forces in 1999, which NATO justified by the argument that the radio installations were also used for military purposes as a propaganda tool. Media facilities and objects may be dual-use objects, serving both civilian and military purposes. The law is not clear regarding such dual-use objects, like roads, bridges, railroad tracks, or radio stations, that can serve both civilian and military purposes. There is no uniform state practice as to when such dual-use objects can be lawfully targeted as military objects. The ICRC and the Institute du Droit International propose a narrow definition. Many states, such as the U.S., take a broader view, considering all objects that provide the enemy with the ability to sustain war are military objects.

In addition to protection as a civilian from direct attacks, rules exist for the Protection of Journalists and Media Professionals in Time of Armed Conflict. Here, a distinction must be drawn between "journalists engaged in professional missions" and "war correspondents". The difference is that war correspondents are formally authorized to accompany armed forces.

While both are considered civilians under International Humanitarian Law, only war correspondents will receive prisoner of war status if captured, just like members of the armed forces. Provided that the correspondent is accredited by the armed forces being accompanied, a war correspondent is entitled to prisoner-of-war status if taken into captivity by the adversary. For these reasons, a war correspondent shall be given an identity card. If the journalist is not accredited, a further distinction must be drawn between nationals of the adversary party and foreigners. As a national of a party, the captured enjoys the same protection as

[71] *Prosecutor v. Nahimana*, Case No. ICTR-99-52-T, Judgment and Sentence, ¶ 1071 (Dec. 3, 2003).

civilians in the hands of the opponent, i.e., he must be protected against any form of violence and in all circumstances, be treated humanely. In the event of arrest and detention, their right to humane treatment must be respected. They have a right to a fair trial with all its implications. Non-nationals, i.e., foreign journalists who are nationals of a neutral country having normal diplomatic relations with that party to the conflict, are not covered by international humanitarian law. Their situation must be examined by the standards of international human rights law. The idea behind this is as follows: If diplomatic protection is possible, it is to be exercised with priority. In this case, the individual is mediatized by his home state; he is not a direct object of protection of the CC IV. Only if no diplomatic relations with the occupying power are maintained, and the state in question is itself a party to the CC IV are its nationals included in the protection under the CC IV.

In conclusion, by protecting people seeking, receiving, and imparting information, the Geneva Conventions, Protocol I, and related customary law rules make a significant though indirect contribution to promoting and safeguarding the right to information in times of armed conflict.

V. CONCLUSION

It has been shown that Public International Law only provides for rules limiting offensive state speech, propaganda, and other measures of information warfare. The general obligation is to refrain from intervening in the domestic affairs of another state. This general obligation is further specified for diplomatic relations, the protection of the dignity of the state, broadcasting, human rights, and international humanitarian law. The problem is that there are no effective enforcement mechanisms.