

INTERNATIONAL LEGAL RESPONSES TO “PROPAGANDA FOR WAR” IN MODERN WARFARE

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I. INTRODUCTION

Despite initial hopes, the fall of the Soviet Union at the end of 1991 and the resulting end of the Cold War have not necessarily brought stable democracy, freedom of press, peace and security, or prosperity to the newly independent nations. In fact, with time, the tensions and aggression in the region have only increased. Post-Soviet history is abundant with examples of funneling such aggression, incitement of racism, and intolerance, giving rise to military hostilities, mutual accusations of genocide, and crimes against humanity. The full-scale war in Ukraine, and the armed conflict over Nagorno-Karabakh between Armenia and Azerbaijan are just the most recent examples of long-running disputes between governments and nations.

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“Propaganda and distorted narratives from various parties in the conflict area and outside have hindered conflict resolution and peace processes for decades,”—noted the UN Secretary-General in her global 2022 report the UN Special Rapporteur on freedom of expression. Interestingly enough, to support her view, she gave the protracted conflict in Nagorno-Karabakh as an example.¹

This essay examines international political and legal responses and remedies for propaganda for war in the context of the current armed conflict in Ukraine, reviews the scope of the prohibition of such propaganda through the context of the modern understanding of war, and discusses the current capabilities of propaganda. Disinformation is considered here as an instrument of propaganda rather than “an evil” in itself. The role of *state* propaganda in funneling armed conflicts remains of particular importance due to its contradiction with the universal understanding of freedom of expression and independence of the media. While the European Union provides the most comprehensive approach to Russian propaganda and disinformation, with international ‘restrictive measures’ targeting media actors. These EU sanctions and the subsequent case law challenged the infallible status of media freedom in the regulatory debate on harmful media content, involving the arguments on impermissibility of (inter-)state censorship, and on the limits of the power to interfere with media content. A counteraction to propaganda and disinformation in the form of sanctions is a new tool, first employed by Ukraine and other Eastern European countries, and now—the EU.

II. DEFINITIONS OF PROPAGANDA FOR WAR

In 1928, the now classical U.S. author on propaganda, Edward Bernays, not only defined propaganda as “a consistent, enduring effort to create or shape events to influence the relations of the public to an enterprise, idea or group,” but also described at length the benefits of propaganda for social benefits, education and emancipation of women.

¹ U.N. Secretary-General, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Disinformation and Freedom of Opinion and Expression During Armed Conflicts*, A/77/288 (Aug. 12, 2022) at 9 [hereinafter *Disinformation and Freedom of Opinion*], <https://www.ohchr.org/en/documents/thematic-reports/a77288-disinformation-and-freedom-opinion-and-expression-during-armed>.

He drew the following conclusion: “Only through the wise use of propaganda will our government, considered as the continuous administrative organ of the people, be able to maintain that intimate relationship with the public which is necessary in a democracy.”²

Bernays, described the U.S. government’s “wise use of propaganda” during the First World War in the following way:

They not only appealed to the individual by means of every approach—visual, graphic, and auditory—to support the national endeavor, but they also secured the cooperation of the key men in every group—persons whose mere word carried authority to hundreds or thousands or hundreds of thousands of followers. They thus automatically gained the support of fraternal, religious, commercial, patriotic, social and local groups whose members took their opinions from their accustomed leaders and spokesmen, or from the periodical publications which they were accustomed to read and believe. At the same time, the manipulators of patriotic opinion made use of the mental cliches and the emotional habits of the public to produce mass reactions against the alleged atrocities, the terror and the tyranny of the enemy.³

Following the Second World War, however, the term “propaganda” became taboo because it was connected with the Nazis and Goebbel’s evil manipulation of the masses. This negative approach to the term and its meaning became appropriate at the start of the Cold War due to public concern about the aggressive propaganda of an “imminent” new world war. In light of this concern, the United Nations, from its first steps, through repeated Resolutions and Declarations, committed itself to stopping such malicious propaganda to prevent new wars.⁴

² Edward L. Bernays, *Propaganda (1928)*, HISTORY IS A WEAPON (Mar. 27, 2023, 9:49 PM), <http://www.historyisaweapon.org/defcon1/bernprop.html>.

³ *Id.*

⁴ See MICHAEL G. KEARNEY, THE PROHIBITION OF PROPAGANDA FOR WAR IN INTERNATIONAL LAW 78-79 (2007).

As a result, in 1966, with the adoption, of the International Covenant on Civil and Political Rights (ICCPR), “propaganda for war” became an internationally established and recognized violation of human rights. While the provisions and possible limitations of ICCPR’s Article 19 on freedom of expression are well-researched and rehearsed around the world, serving as a model for national law, there has been less academic and political focus on its Article 20, which stipulates: “Any propaganda for war shall be prohibited by law.”⁵

The limited academic research given in the past decades to the interpretation and practical implementation of the ban on such media-driven propaganda in both international law and policy is probably best explained by the scarcity of caselaw on such propaganda in the democratic states and an absence of consensus as to how such propaganda can be stopped, without injury to freedom of expression.

With time, the importance of efforts to prevent wars in relation to the values of human rights became widely understood and better formulated. Propaganda for war results in abuses of the core human rights stipulated in the ICCPR, such as the right to life. In fact, as an exercise of freedom of expression, propaganda for war has a direct or collateral aim at humanity itself. We see that both West and East, and North and South have agreed on these postulates, but their interpretations of what constitutes propaganda for war have differed somewhat.⁶

Unsurprisingly, in the communist world, the phenomenon assumed a clearly ideological meaning. In the definitional discussion, it is worth noting a set of eight legal acts, national laws known as “On the Protection of Peace” which were adopted in 1950-1951 by a number of socialist countries, from Albania to Mongolia.⁷ These statutes and the relevant national penal provisions were in fact directed at

⁵ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 20 (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶ See Andrei Richter, *The Relationship between Freedom of Expression and the Ban on Propaganda for War*, EUROPEAN YEARBOOK ON HUMAN RIGHTS, 489-503 (2015), (discussing the interplay of propaganda for war and freedom of expression).

⁷ See On the Protection of Peace (Mar. 12, 1951), for a USSR Statute which was annulled only in December 2012; See also (Fundamental Law) of the Union of Soviet Socialist Republics [Constitution], (a ban on propaganda of war has even become part of the USSR Constitution); Compare, with Russian Federation’s Constitution of 1993 (not transposed into the succeeding current Russian Constitution).

propaganda for war and nothing else.⁸ Formally, they were adopted in response to the Second World Peace Congress' call to the parliaments of the world to outlaw "propaganda favouring a new war."⁹

The World Peace Movement of the times was strongly supported by the USSR, as well as Western, left-leaning organizations and intellectuals. The Movement was extremely outspoken on the need to diminish the threat of atomic weapons and to stop war propaganda—two topics which have prominently returned in today's news agenda.

The Movement then suggested particular mechanisms to achieve its aims. For example, a resolution of the World Peace Congress in Warsaw called upon "all honest men and women" in the world "to maintain a firm boycott against all individuals, organizations, publishing houses and film-producing companies, press organs, broadcasting stations which directly or indirectly spread 'propaganda for war' and "to protest against all forms of art and literature which foster such propaganda."¹⁰ Beyond this global *boycott* of propaganda for war and protest actions, the Congress suggested *education* in a spirit of international cooperation and respect for other nations.¹¹ Moreover, the media workers were specifically called upon to *refrain* from being used "as instruments of propaganda for war, of propaganda of slaughter and hatred amongst the nations" and rather engage "in spreading the principles of peace and mutual understanding amongst the peoples."¹² Naturally enough, most of these calls were addressed to the West, not the East.

⁸ *E.g.*, in Russia: Art. 71 of the 1960 Crim. Code (imprisonment from 3 to 8 years), *Compare, with* Art. 354 of the 1996 Crim. Code (maximum penalty—five years' imprisonment).

⁹ *See WE CAN SAVE PEACE: STORY OF THE SECOND WORLD PEACE CONGRESS WARSAW 10 (1950), BRITISH PEACE COMMITTEE [hereinafter WE CAN SAVE PEACE]; See also* Address to the U. N. para. 5, BRITISH PEACE COMMITTEE ("We appeal to the Parliaments of all countries to enact a 'Law for the Protection of Peace' which shall render all propaganda for a new war, whatever form it may take, liable to criminal prosecution.") (Additionally, its *Address to the United Nations*, para. 5, proclaims: "We appeal to the Parliaments of all countries to enact a 'Law for the Protection of Peace' which shall render all propaganda for a new war, whatever form it may take, liable to criminal prosecution.").

¹⁰ *See WE CAN SAVE PEACE, supra* note 9, at 12

¹¹ *Id.*

¹² *Id.*

The three tools—boycott, education, and restraint—will reverberate once there is a modern response to propaganda. In practice, however, the communist laws for the protection of peace were generally used to stop dissemination of critical Western narratives from abroad as “warmongering” and to punish political dissidents as “acolytes” of the “blood-thirsty” militarists and imperialists.¹³ It was for these formal reasons that the USSR started jamming Western radio stations in late 1940s, a practice that would last till the late 1980s.¹⁴ Conveniently enough, the laws “On the protection of peace” were elusive and overbroad as to the definition of the “propaganda for war.”

On the other hand, Western countries including Belgium, Denmark, Finland, Iceland, Malta, Netherlands, New Zealand, Norway, Sweden, Switzerland, the U.K., and the U.S., have all made reservations as to their obligations from ICCPR’s Article 20 to enact restrictive national norms on the production and dissemination of propaganda for war, often citing, that such a prohibition could limit freedom of expression in their countries.¹⁵

Despite the East-West controversy, several early resolutions of the UN General Assembly (UNGA) were still adopted at the earlier stage of the global efforts to stop propaganda for war, and they read today as if they were written recently, not 70 years ago.

UNGA Resolution 290 (IV) from 1949 suggested to promote “full freedom for the *peaceful* [*italics are mine* - AR] expression of political opposition” and to “remove the barriers which deny to peoples the free exchange of information and ideas”—but only as long as it is “essential to international understanding and peace.”¹⁶ It also called on the five permanent members of the UN Security Council to “exercise restraint in the use of the veto” power in order to make this body an effective “instrument for maintaining peace.”¹⁷

¹³ See Richter, *supra* note 6.

¹⁴ See Kristin Roth-Ey, *Listening Out, Listening For, Listening In: Cold War Radio Broadcasting and the Late Soviet Audience*, 79 *The Russ. Review* 556, 561-562 (2020).

¹⁵ See International Covenant on Civil and Political Rights, *Declarations and Reservations*, U.N. TREATY COLLECTION (Dec. 16, 1966), https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND.

¹⁶ G.A. Res. 290 (IV), *Essentials of Peace*, (Dec. 1, 1949), <http://www.un-documents.net/a4r290.htm>.

¹⁷ *Id.*

In another resolution, the UNGA gave a rather distinct definition to war propaganda by saying that it “[c]ondemns all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.”¹⁸ The UN thus invoked an intent or a threat of hostilities as the criteria for the illegal act.

It is important to note that the UN General Assembly then further elaborated on the definition of propaganda for war by stating that it also includes “propaganda against peace,” that is, “measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio and other media of communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples.”¹⁹ Thus, an intrinsic element of such propaganda became the activities by governments “tending to silence or distort the activities of United Nations in favour of peace or to prevent their peoples from knowing the views of other States Members.”²⁰

By establishing a link between propaganda and suppression of free speech, the UN General Assembly pointed out that propaganda’s success is generally possible when the media are monopolized or deprived of their freedom to report on relevant events and dissenting opinions.

In the Helsinki Final Act (1975), that laid foundation to international *detente* and the Organization on Security and Co-operation in Europe (OSCE), the participating states, by consensus, committed themselves, *inter alia*, to promote in their relations with one another “a climate of confidence and respect among peoples consonant with their duty to refrain from propaganda for wars of aggression” against another participating State.²¹ Although the OSCE commitments are not legally binding they establish or confirm statements of principle.

¹⁸ G.A. Res. 110 (II), Measures to be Taken Against Propaganda and the Inciters of a New War, (Nov. 3, 1947), <http://www.un-documents.net/a2r110.htm>.

¹⁹ G.A. Res. 381 (V), Condemnation of Propaganda Against Peace, at (2) (Nov. 17, 1950).

²⁰ *Id.* at (3).

²¹ Conference on Security and Co-operation in Europe Final Act, Helsinki (Aug. 1, 1975), <https://www.osce.org/files/f/documents/5/c/39501.pdf>.

Any distinct formula of propaganda will follow the 1947 UNGA resolution and will have to take into account the scope of the crime suggested by the UN Human Rights Committee (UNHRC) in its General comment No. 11, which is dedicated to interpretation and lack of compliance with Article 20. This 30-years-old, one-page document notes that the prohibition 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 and aims both to the internal and external public to the State concerned.²²

At the same time, it makes an important exclusion from the “all forms” scope of the crime by saying that ban on propaganda for war does not “prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations.”²³ By “self-defence,” the Charter means exclusively measures taken by a Member of the United Nations “if an armed attack occurs against” it.²⁴ It is important to note the comment of the UNHRC that, for the ban, it does not matter “whether such propaganda or advocacy has aims which are internal or external to the State concerned.”²⁵ This conclusion underlines the transborder nature of the prohibition.

The leading expert on the issue, Michael Kearney from UK, states that the meaning of propaganda for war is “only as imprecise as states wish it to be.”²⁶ He considers that the key issue of the definition is whether the term is limited to direct “incitement to war” or whether it additionally encompasses propaganda which serves either as a means of preparation for a future war or to preclude peaceful settlement of disputes.²⁷ ARTICLE 19, a global freedom of expression campaign, for example, found the latter part of the interpretation as being “too broad” by pointing to all States, which “routinely convey a narrative

²² See Off. of the U.N. High Comm’r for Hum. Rts., General Comment No. 11, Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred (art. 20), para. 2 (Sept. 7, 1983) [hereinafter General Comment No.11], <http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>

²³ *Id.*

²⁴ U.N. Charter art. 51.

²⁵ See General Comment No. 11, *supra* note 22, at para. 2.

²⁶ MICHAEL G. KEARNEY, THE PROHIBITION OF PROPAGANDA FOR WAR IN INTERNATIONAL LAW 189 (2007).

²⁷ *Id.* at 5-6.

that portrays their own war efforts in a favorable light.”²⁸ It seems to be a weak argument, since portraying an *aggressor* state as a mighty power and a victor does not necessarily mean undermining—through propaganda—the very possibility of finding a peaceful solution.

Recently doubts were also voiced as to whether prohibition of propaganda for war can be applied during an armed conflict, or is appropriate only in times of peace. The UN Special Rapporteur in her global report noted that the prohibition “is understood to be applicable only in relation to aggression or breach of peace contrary to the Charter of the United Nations and limited to incitement of war and not to propaganda during war.”²⁹ Her limited understanding of the prohibition refers to the submission of ARTICLE 19 and the author’s earlier article.³⁰ Still, none of the referred sources actually give grounds to a claim that propaganda for war is allowed during war. This understanding is shared by Carrillo, Clinical Professor of Law and founding Director of the Civil and Human Rights Law Clinic at the George Washington University Law School, who says that the ban on propaganda for war is “a norm that by definition can only apply in times of peace.”³¹ He refers in this regard to General Comment 11, but its text does not reveal grounds for such an understanding.³²

Perhaps, such a limited understanding is rooted in the concept that during war the rules of the International Humanitarian Law (IHL) prevail, and the International Human Rights Law (IHRL) is shadowed while the parties to the war derogate from its provisions under the ICCPR (including under its Art. 20). But it is broadly recognized today “that both IHL and IHRL apply during armed conflicts and that they provide complementary and mutually reinforcing protection. This means that while the emergence of an armed conflict triggers the

²⁸ Article 19 Submission, Response to the Consultation of the U.N. Special Rapporteur on Freedom of Expression on Her Report on Challenges to Freedom of Opinion and Expression in Times of Conflicts and Disturbances (July 19, 2022) [hereinafter Response to the Consultation], <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/conflict/2022-10-07/submission-disinformation-and-freedom-of-expression-during-armed-conflict-UNGA77-cso-article19.pdf>.

²⁹ *Disinformation and Freedom of Opinion*, *supra* note 1, at para. 39.

³⁰ *See generally* Richter, *supra* note 6.

³¹ Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 *Fordham Int'l L.J.* 57, 118 (2023).

³² *See generally* General Comment No. 11, *supra* note 22.

applicability of IHL, it does not suspend the applicability of IHRL.”³³ In addition, modern aggressor states, do not typically declare wars, martial law, or derogation from the ICCPR.

As for the methods employed by propaganda that would allow courts to distinguish it from other forms of speech, Manfred Nowak, the principal interpreter of the ICCPR, pointed out that they constitute “intentional, well-aimed influencing of individuals by employing various channels of communication to disseminate, above all, incorrect or exaggerated allegations of fact. Also included thereunder are negative or simplistic value judgements whose intensity is at least comparable to that of provocation, instigation, or incitement.”³⁴ Frederick Lumley, in 1933, put the set of methods laconically: they are a combination of “suppression, distortion, diversion and fabrication.”³⁵

III. ROLE OF THE STATE

In the modern world, international conflicts are typically intensified and inflated with the use of broadcasting and social media, which have become mighty instruments of manipulation, disinformation, and propaganda, especially in the hands of authorities, which see a military solution to conflicts as a way to rally public support within their countries, to denigrate and stigmatize the opposition, legitimize their hold of power, and eventually extend their rule beyond all time limits. Alas, the national courts and traditional media institutions in many cases fell prey to these policies. As a result, we see state media control and speech censorship on the rise, replacing media freedom with propaganda, including its most dangerous form: propaganda for war.

Some scholars argue that while powerful media corporations are indeed able to use their own initiative and means to disseminate such propaganda, a beleaguered government torn by civil strife cannot counteract, and the dissemination is unlikely to be “launched without at least implicit support of a third state.”³⁶ Therefore, the operation and

³³ Response to the consultation, *supra* note 28, at 3. *See also Disinformation and Freedom of Opinion*, *supra* note 1, at 33-35.

³⁴ MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS CCPR COMMENTARY, 472 (2nd rev. ed. 2005).

³⁵ FREDERICK E. LUMLEY, THE PROPAGANDA MENACE 116-117 (1933).

³⁶ *See* Kearney, *supra* note 26, at 101, 134, 142-145, 168.

dominance of the loyal media operated or controlled by the State, such as in some of the post-Soviet countries,³⁷ is in itself a legacy of the communist times of thought control, that seem to enable and legitimize the phenomenon.

The role of the authoritarian state in times of dominant traditional media remains prevalent in the modern world through its tremendously significant use of social media, blogging, and citizen journalism. Without trolls and DDoS-attacks sponsored by governments, manipulating users' minds would not be as effective today—if effective at all.³⁸

Although Article 20 of the ICCPR establishes an obligation for states to prohibit propaganda for war in domestic legislation, it means also that the states not only have an obligation to address propaganda for war by others, but also should refrain from engaging in such propaganda through the media that it controls or otherwise. Such a conclusion is supported by the U.N. Joint Declaration on Freedom of Expression from four Special Rapporteurs appointed by international organizations, which condemns governments making, sponsoring, encouraging or further disseminating statements, “which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda).”³⁹ This follows the idea, previously expressed by one of the rapporteurs that “[t]oday in the 21st century, as it was in the past, state media is the main vehicle of propaganda.”⁴⁰ These rapporteurs also directly pointed to the propaganda for war by the Russian

³⁷ Such post-Soviet states are: Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan (which in 2022 replaced its PSB by the state broadcaster), Russian Federation, Tajikistan, Turkmenistan, and Uzbekistan.

³⁸ See Richter, *supra* note 6, at 494.

³⁹ *Joint Declaration on Freedom of Expression and “Fake News,” Disinformation and Propaganda*, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (Mar. 3, 2017), <http://www.osce.org/fom/302796?download=true>.

⁴⁰ Dunja Mijatović, *Communiqué by OSCE Representative on Freedom of the Media on Propaganda in Times of Conflict*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (Apr. 15, 2014), <https://www.osce.org/fom/117701>.

authorities when in 2022, calling, “to immediately refrain from these unlawful practices.”⁴¹

IV. SCOPE OF MODERN WAR AND ITS PROPAGANDA

Today, propaganda benefits from a wide use of modern technologies that enable it to multiply its messages and instantly deliver them to targeted audiences around the world. Thus, what was considered propaganda just years ago has new dimensions that must be considered when countering its harmful effects. While disinformation remains the key instrument of any malicious propaganda, its influence has increased due to the decline of the traditional standard-based press and a wide application of technological innovations, such as “deep fakes.” Moreover, the scale of propaganda and disinformation has increased manifold, as millions of Internet users worldwide have started to play an important role in international conflicts simply by posting text or image to a website.⁴² Social media plays a major role in modern conflicts. It enables people to remain connected to family, friends and the outside world, as well as access to a wide range of information, which includes disinformation, propaganda and hate speech.⁴³

The notion of “war” has also been expanded in the past few years. In the past, a military attack was a clearly-understood concept. Such a violent attack inflicted injury, damage, and destruction resulting in an armed conflict, a likely counterattack, defensive actions, or—in one word—a war.

Unlike in the past, wars in today’s “real-world” no longer begin with a formal ultimatum or declaration of war handed down by an ambassador of the aggressor state. Neither do they typically end with a formal peace treaty, thus mitigating wars into the category of “frozen

⁴¹ Off. of the U.N. High Comm’r for Hum. Rts., *Ukraine: Joint Statement on Russia’s Invasion and Importance of Freedom of Expression and Information* (May 4, 2022) [hereinafter Ukraine], <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom>.

⁴² Kenneth Geers, *Cyberspace and the Changing Nature of Warfare*, COOPERATIVE CYBER DEFENCE CENTRE OF EXCELLENCE, at 3.0 (2018), https://ccdcoe.org/uploads/2018/10/Geers2008_CyberspaceAndTheChangingNatureOfWarfare.pdf.

⁴³ *Disinformation and Freedom of Opinion*, *supra* note 1, at para. 3.

conflicts.” Modern wars have a more thorough use of information as a weapon that they employ. The key elements of the weapon are *cyberwars, information operations, information warfare and hybrid wars*.

Digital wars take place in cyberspace, presenting significant threats to national security. Such a *cyberwar* is defined as “operations against a computer, a computer system or network, or another connected device, through a data stream, when used as means or methods of warfare in the context of an armed conflict.”⁴⁴ Cyber warfare raises questions about how certain provisions of law concerning armed conflict or International Humanitarian Law, apply to these operations, and whether it might require further development. For example, there is “a host of new and unique questions around what cyber activities rise to the level of an [armed] ‘attack’ and, by extension, how states have to comply with IHL.”⁴⁵ Are cyberattacks simply varying types of commonly understood “traditional” wars, or are they stand-alone phenomena that should be treated differently than “traditional” wars in the law?⁴⁶

An academic military project called “Tallinn Manual” elaborates a lot on this question.⁴⁷ The project’s experts remind that traditionally only significant injury or physical damage allows to qualify an armed attack.⁴⁸ Typically, a hostile cyber operation does not permit a non-cyber defensive action, although it indicates that there is a right to self-

⁴⁴ The Int’l Comm. of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions*, 2020, at 26, https://www.icrc.org/sites/default/files/document/file_list/challenges-report_new-technologies-of-warfare.pdf.

⁴⁵ Jonathan Horowitz, *Cyber Operations under International Humanitarian Law: Perspectives from the ICRC*,

24 AMERICAN SOCIETY OF INT’L LAW (May 19, 2020), https://www.asil.org/insights/volume/24/issue/11/cyber-operations-under-international-humanitarian-law-perspectives-icrc#_ednref8.

⁴⁶ See *Merck & Co. v. Ace Am. Ins. Co.*, No. UNN-L-2682-18, 2021 N.J. Super. LEXIS 4566, at 14 (Dec. 6, 2021), where the latter was the argument in a U.S. court.

⁴⁷ See Charlie Dunlap, Int’l Law and Cyber Ops: Q & A with Mike Schmitt About the Status of Tallinn 3.0, LAWFIRE (Oct. 03, 2021, 6:57 PM), <https://sites.duke.edu/lawfire/2021/10/03/international-law-and-cyber-ops-q-a-with-mike-schmitt-about-the-status-of-tallinn-3-0/>.

⁴⁸ *Id.*

defense in cyber space. However, in 2019, France suggested to categorize cyber as an armed attack if it “caused substantial loss of life or considerable economic damage.”⁴⁹ Thus, the experts see “a degree of movement” here.⁵⁰

Another expert in cyber defense, Kenneth Geers, even equates cyberattacks with propaganda. He describes propaganda as “often both the easiest and the most powerful cyber-attack.”⁵¹ He explains:

Digital information, in text or image format—and regardless of whether it is true—can be instantly copied and sent anywhere in the world, even deep behind enemy lines. And provocative information that is removed from the Web may appear on another website in seconds.⁵²

Geers provides an example from April 2007, when a Russian DDoS attack on Estonia’s government, law enforcement, banking, media, and Internet infrastructure; at the same time a hacker defaced the Estonian ruling political party website, changing the homepage text into a threatening note.⁵³ Indeed, propaganda, inasmuch as a cyberattack, can make serious and lasting harm to the civilian population. A person’s mental health is traumatized by the extreme endurance of fear or grief, through developed paranoia caused by conspiracy theories, and so on.

Still, the author’s view is that cyberspace warfare should be separated from digital propaganda—the key element of an “information warfare” and “information [special] operations”—and treated differently. “*Information operations*,” are understood as “campaigns by States or political actors to influence the views, attitudes and behavior of adversaries or the public in order to achieve political and military objectives.”⁵⁴ Information instruments of war, such as propaganda and disinformation, including propaganda for war—among troops, civilian population, potential friends and foes in

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Geers, *supra* note 42, at 2.2.

⁵² *Id.*

⁵³ *Id.* at part 7.

⁵⁴ *Disinformation and Freedom of Opinion*, *supra* note 1, at para. 15.

the international arena—have traditionally belonged to an armed conflict's toolbox. These days they are definitely “cyber-enabled.” While cyberattacks *per se* are effectively responded to with strengthening cyber defense, temporary internet shutdowns, or with cyber counterattacks, “government counter-propaganda” is not considered by media experts an appropriate answer to malicious propaganda.⁵⁵

“*Information warfare*” should also be separated from the “hybrid war” although the former can be—but not necessarily is—an integral part of the latter. Internationally, the hybrid war is defined as “a combination of military and non-military measures of a covert and overt nature, deployed to destabilize the political, economic and social situation of a country under attack.”⁵⁶ Russian military doctrine, for example, explicitly recognizes information warfare as one of its domains.⁵⁷

In their turn, modern *hybrid wars* necessarily include cyberwars, inasmuch as information warfare is an element of a modern armed conflict. In both hybrid war and armed conflict, arms are used, thus they might truly qualify as wars. At the same time, however, information war and cyberwar are unlikely to be qualified today in the same manner. To summarize, is propaganda for “information war” a form of propaganda for war as understood by the ICCPR? Likely not. Are calls for “cyber aggression” a propaganda to be prohibited? Probably, yes.

V. MODERN RESPONSE TO PROPAGANDA

Aggressive propaganda and propaganda of aggression broke into the international agenda with the start of the conflict in and around

⁵⁵ OSCE The Representative on Freedom of the Media, *Propaganda and Freedom of the Media*, 2015, at 7, [hereinafter *Propaganda and Freedom*], <https://www.osce.org/files/f/documents/b/3/203926.pdf>.

⁵⁶ EUR. PARL., *European Parliament Resolution of 23 November 2016 on EU Strategic Communication to Counteract Propaganda Against it by Third Parties* (2016), at para. D [hereinafter *European Parliament*], <https://tinyurl.com/ydyfy89k>.

⁵⁷ MICHAEL KOFMAN ET AL., *Russian Military Strategy: Core Tenets and Operational Concepts*, CENTER FOR NAVAL ANALYSES, Aug. 1, 2021, at 24, https://www.cna.org/archive/CNA_Files/pdf/russian-military-strategy-core-tenets-and-operational-concepts.pdf.

Ukraine in 2014. A reassessment of how to address them jumped high in the agenda of the states and intergovernmental organizations. First came “Propaganda and Freedom of the Media,” a discussion paper for the OSCE participating States, published by its Representative on Freedom of the Media.⁵⁸ Therein this author attempted to bring the issue of propaganda for war back to the attention of scholars, diplomats and politicians.⁵⁹ In 2016, though, despite significant efforts of their delegations, the OSCE participating States failed to reach a consensus on a Ministerial Council decision as to propaganda for war and hatred, mostly because of an opposition from the U.S. and the Holy See (Vatican) delegates.⁶⁰

At about the same time the Estonian, Lithuanian, Danish and British Foreign Ministers⁶¹ initiated an intense revamping of the institutions of the European Union (EU) on disinformation, including in the context of propaganda for war. As a result, in 2015-22, consistently adopted—and implemented,—were a number of resolutions, strategic communications, and action plans directed, in particular, to set perimeter barriers for war propaganda and hybrid aggressions. They comprised perhaps the most comprehensive political response among all intergovernmental organizations. It consists of the *Action Plan on Strategic Communication*⁶² the European Parliament’s resolution on *EU strategic communication to counteract propaganda against it by third parties*,⁶³ the *Communication Tackling online disinformation: A European*

⁵⁸ See generally *Propaganda and Freedom*, *supra* note 55.

⁵⁹ *Id.*

⁶⁰ See OSCE, PERMANENT MISSION OF THE HOLY SEE TO THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (2022), <https://www.osce.org/files/f/documents/1/9/522652.pdf>.

⁶¹ *Estonia, Lithuania, UK, Denmark call for EU Action on Russian Information Warfare; Latvia Refuses to Join*, THE BALTIC TIMES (Jan. 15, 2015), https://www.baltictimes.com/estonia_lithuania_uk_denmark_call_for_eu_action_on_russian_information_warfare_latvia_refuses_to_join/.

⁶² *EU Action Plan on Strategic Communication* (June 22, 2015), https://www.eas.europa.eu/sites/default/files/action_plan_on_strategic_communication.docx_eas_web.pdf.

⁶³ See EUR. PARL., *supra* note 56.

approach,⁶⁴ *Code of Practice on Disinformation*,⁶⁵ the European Commission's *Action Plan against Disinformation*,⁶⁶ the European Commission's *European Democracy Action Plan*,⁶⁷ and—last but not the least—the 2022 *Digital Services Act*,⁶⁸ that transforms the *Code of Practice on Disinformation* into *Strengthened Code of Practice*.⁶⁹

The 2022 Digital Services Act created a “crisis mechanism,” which enables the European authorities, in times of crisis involving threats to national security, to impose “a state of emergency on social media sites, search engines, and online marketplaces” and “to intervene in platforms’ policies.”⁷⁰ These documents speak of “propaganda warfare” rather than of “propaganda for war,” the latter, however, being duly noted in the references made to Article 20 of the ICCPR. They also underline that incitement of war “cannot ‘hide’ behind freedom of expression.”⁷¹

⁶⁴ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling online disinformation: A European Approach*, at 18, COM (2018) 236 final (Apr. 26, 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236>.

⁶⁵ EU Policy and Legislation, *2018 Code of Practice on Disinformation* (June 16, 2022), <https://digital-strategy.ec.europa.eu/en/library/2018-code-practice-disinformation>.

⁶⁶ *Action Plan against Disinformation*, Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN(2018) 36 final (Dec. 5, 2018), https://www.eeas.europa.eu/node/54866_en.

⁶⁷ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: On the European Democracy Action Plan*, at 25-26, COM (2020) 790 final (Dec. 3, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

⁶⁸ 2022 O.J. (L 277) 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>.

⁶⁹ EU Policy and Legislation, *2022 Strengthened Code of Practice on Disinformation* (June 16, 2022), <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>.

⁷⁰ Morgan Meaker, *Ukraine War Prompts Europe's New Emergency Rules for the Internet*, WIRED (Apr. 26, 2022), <https://wired.me/business/ukraine-war-prompts-europes-new-emergency-rules-for-the-internet/>.

⁷¹ See EUR. PARL., *supra* note 56, at para. 35.

VI. REINTERPRETATION OF WAR PROPAGANDA TO INTRODUCE INTERNATIONAL SANCTIONS

A. *Kiselev Case*

In parallel to the above response mechanisms, since March 2014, the Council of the EU has progressively imposed restrictive measures in respect of actions undermining the territorial integrity, sovereignty, and independence of Ukraine. In particular, Dmitrii Kiselev, a popular TV host and Director-General of the international news agency Rossiya Segodnya (RS), was included on the lists of persons subject to the sanctions for the following reason:

Appointed by Presidential Decree on 9 December 2013
Head of the Russian Federal State news agency
‘Rossiya Segodnya’. Central figure of the government
propaganda supporting the deployment of Russian
forces in Ukraine.⁷²

Mr. Kiselev’s attempt to challenge his sanctions was dismissed by the European Court of Justice (CoJ), pointing to the fact that the applicant was not a regular Russian journalist. On the contrary, the Court reasoned he engaged in propaganda “by using the means and power available to him as head of RS, a position which he obtained by virtue of a decree of President Putin himself.”⁷³

It is important to note that in its decision, the CoJ cited a ruling of a Latvian media regulator that the Council of the EU was presumably aware of. The Court explained that the national electronic media regulator examined “Vesti nedeli” TV programs anchored by Mr. Kiselyov and considered those programs to “contain war propaganda justifying the Russian military intervention in Ukraine, comparing

⁷² Council Implementing Regulation (EU) No 284/2014 of 21 March 2014, implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, at point 5, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0284&from=FR>.

⁷³ *Dmitrij Konstantinovič Kiseľov v. Council of the European Union*, at para. 117, 2017 E.C.R. T-262/15, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015TJ0262&from=EN>.

defenders of Ukrainian democracy to Nazis.⁷⁴ Additionally, EU personal sanctions against Kiselyov started a chain reaction in Estonia and Latvia where governments used them as a reason to sanction “non-designated entities”: national media affiliates of the news agency that he manages, as economic resources controlled by the targeted person. In another set of national cases the “restrictive measures” against Bank Rossiya were also applied, in the Baltics, to its media company and subsidiaries.⁷⁵

B. *RT & Sputnik Cases*

Following the full-scale invasion of Ukraine by the armed forces of the Russian Federation in March 2022, the EU banned the state-owned media outlets RT and Sputnik, and their subsidiaries, through sanctions or “special economic measures” in response to the conflict.⁷⁶ The EU justified the ban, reasoning those media outlets have been targeted as “essential and instrumental in bringing forward and supporting the aggression against Ukraine.”⁷⁷ Since then, the ban was expanded to include several other Russian national TV channels under state control, mostly Russian-language programmes.

Both the European Commission and the Council of the EU stated then that the sanctions were compatible with the European freedom of expression standards,⁷⁸ apparently meaning that the restrictions met the three-part test of legality, legitimate aim, and necessity and proportionality required by international human rights law.⁷⁹ As to the proportionality, the Regulation pointed that these measures “do not prevent those media outlets and their staff from carrying out other

⁷⁴ *Id.* at para. 104-105.

⁷⁵ See Francisco Cabrerar Blázquez, *The Implementation of EU Sanctions Against RT and Sputnik*, European Audiovisual Observatory, at 15, 18 (2022); See also Andrei Richter, *Sanction law against Russian and Belarusian audiovisual media*, EUROPEAN AUDIOVISUAL OBSERVATORY 1-29 (2022), <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>.

⁷⁶ Council Regulation 2022/350, O.J., (L65/1) of Mar. 1, 2022, Amending Reg. No 833/2014, *Concerning Restrictive Measures of Russia's Actions Destabilizing the Situation in Ukraine* (EU) [hereinafter *Concerning Restrictive Measures*] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0350>.

⁷⁷ *Id.* at para. 9.

⁷⁸ *Id.* at para. 10.

⁷⁹ See Response to the Consultation, *supra* note 28.

activities in the Union than broadcasting, such as research and interviews,” nor did it ban their operation outside of the EU.⁸⁰

C. Interpretation

In 2022, the restriction was based, additionally, on an indirect interpretation of “propaganda for war,” by the European institutions. For example, the European Council referred to Russia’s “continuous and concerted propaganda actions” to “justify and support its aggression against Ukraine.”⁸¹ In its turn, the European Commission substantiated the sanctions by referring to the “massive propaganda and disinformation” of the Russian media outlets in relation to “*this outrageous attack on a free and independent country,*” and that they pour “*their toxic lies justifying Putin’s war,*” and pose a “significant and direct threat to the Union’s public order and security.”⁸²

According to the EU documents, the Russian Federation “has engaged in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilisation of its neighbouring countries and of the Union and its Member States.”⁸³ Those actions “have been channelled through a number of media outlets under the permanent direct or indirect control of the leadership of the Russian Federation. Such actions constitute a significant and direct threat to the Union’s public order and security,” and “are essential and instrumental in bringing forward and supporting the aggression against Ukraine, and for the destabilisation of its neighboring countries.”⁸⁴

It is prohibited for “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast [in the EU], any content by the legal persons, entities or bodies [on the banned media list], including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed.”⁸⁵ Further, the

⁸⁰ See *Concerning Restrictive Measures*, supra note 76 at para. 11.

⁸¹ *Id.* at para. 7.

⁸² European Commission Press Release IP/22/1490, Ukraine: Sanctions on Kremlin-backed Outlets Russia Today and Sputnik (Mar. 2, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1490.

⁸³ *Concerning Restrictive Measures*, supra note 76, at para. 6-9.

⁸⁴ *Id.*

⁸⁵ *Concerning Restrictive Measures*, supra note 76, at para. 1.

regulation states any “broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies [on the banned media list] shall be suspended.”⁸⁶ While it was also prohibited to “participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions,”⁸⁷ there are reports of successful flouts by the Russian state media of the bans.⁸⁸

The abovementioned restrictive measures, said the EU, will be maintained “until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States.”⁸⁹

Such a tense narrative even allowed some authors to refer to the Regulation as restrictions of “[pro-war] propaganda” by inserting the attribution in square brackets.⁹⁰ In another interpretation of the reasoning behind the sanctions, the Denis Diderot Committee,⁹¹ in France, said:

The comments made on these channels, in particular on Rossiya 1, go beyond the ‘false narratives and disinformation’ mentioned in the documents of the European Council. In addition to legitimizing the rhetoric of aggression against Ukraine, they broadcast calls for the kidnapping and even the assassination of foreign leaders visiting Ukraine, statements inciting the genocide of Ukrainians, homophobic and antisemitic statements, legitimization of possible use of nuclear weapons against ‘40 Nazis States,’ announcement that

⁸⁶ *Id.*

⁸⁷ *Id.* at para. 3.

⁸⁸ Mark Scott, *Russian State Media Flouts European Sanctions*, POLITICO (July 20, 2022, 1:00 PM), <https://www.politico.eu/article/russia-europe-sanctions-social-media-rt/amp/>.

⁸⁹ *Concerning Restrictive Measures*, *supra* note 76, at para. 11.

⁹⁰ *See Carrillo*, *supra* note 31, at 83.

⁹¹ *See* COMITÉ DENIS DIDEROT DENIS DIDEROT COMMITTEE (a French NGO that aims at excluding war propaganda and disinformation in the Russian and Belarus electronic media, <https://www.denisdiderot.net/about> (last visited Mar. 27, 2023)).

World War III has begun and that Russia must ‘demilitarize NATO.’⁹²

The legality of the sanctions against the Russian media was confirmed by the Court of Justice of the European Union (CJEU).⁹³ In dismissing the claims of the RT branch in France, it treated the ban in Article 20(1) of the ICCPR quite broadly by saying that propaganda for war includes (1) propaganda “in favour of the military aggression against Ukraine targeted at civil society in the [European] Union and neighbouring countries”, (2) broadly understood propaganda *at war*, described as propaganda being “part of the context of an ongoing war”, started by an aggressor State, “in breach of the prohibition on the use of force”, and (3) “not only incitement to a future war, but also continuous, repeated and concerted statements in support of an ongoing war”, unleashed contrary to international law, “especially where those statements come from a media outlet under the direct or indirect control of the aggressor State.”⁹⁴ In this way, the Court also rejected the vision that propaganda for war is legitimate once the war began.

Speaking of the sanctions in the context of freedom and pluralism of the media, guaranteed by the EU Charter, the Court noted that the importance of the objectives pursued by the sanctions outweigh the negative consequences, however considerable, of these measures for the applicant media.⁹⁵ In its decision, the CJEU failed to address the arguments of the complainant on censorship or prior restraint that was introduced by the sanctions on the media concerned.

The EU sanctions against the Russian media were met with certain criticism by the international mandate-holders on freedom of

⁹² *Sanctions Against Three Russian State Channels—Rossiya 24, RTR Planeta and TV Centr International*, COMITÉ DENIS DIDEROT DENIS DIDEROT COMM, <https://www.denisdiderot.net/3russianstatetv> (last visited Mar. 27, 2023).

⁹³ *RT France v. Council of the European Union*, at para. 202, 210, 2022 E.C.R. T-125/22, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

⁹⁴ *RT France v. Council of the European Union*, at para. 202, 210, 2022 E.C.R. T-125/22, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

⁹⁵ *Id.* at 202, 226.

expression,⁹⁶ scholars,⁹⁷ and human right organizations⁹⁸ as damaging the recognized interpretation of freedom of the media. Others, however, believed that they were appropriate as they “paled” by comparison “when contrasted with the Kremlin’s iron-fisted repression and blocking of all independent media inside Russia.”⁹⁹ It is worth noting that the EU sanctions were modeled, to a degree, after similar sanctions introduced earlier by Ukraine and some other Eastern European states.¹⁰⁰

The 2022 report of the Special Rapporteur on freedom of expression to the UN Human Rights Council and the General Assembly was intended to be an important modern response to war propaganda. Titled “Disinformation and freedom of opinion and expression during armed conflicts,”¹⁰¹ it is based on a number of formal submissions by the UN member states, academia, and human rights NGOs, and thus provides a broad context on the issue. Generally, it stays away from going deep into the propaganda for war issues by noting a “confusion among some States and companies about [the] scope [of propaganda for war], which underlines the need for further clarification.”¹⁰² The Report of the UN Special Rapporteur also questions the necessity and proportionality of the ban of Russian channels in Western Europe, “a region where independent media and fact-checkers are able to challenge disinformation and where other less drastic measures could have been considered.”¹⁰³

⁹⁶ See Ukraine, *supra* note, 41.

⁹⁷ Igor Popović, *The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression*, EJIL BLOG (Mar. 30, 2022), <https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>.

⁹⁸ *Fighting Disinformation with Censorship is a Mistake*, EUR. FED’N OF JOURNALISTS (Mar. 1, 2022), <https://europeanjournalists.org/blog/2022/03/01/fighting-disinformation-with-censorship-is-a-mistake/>; IPI: *Statement on Banning of RT and Sputnik*, INT’L PRESS INST. (Mar. 4, 2022), <https://ipi.media/ipi-statement-on-banning-of-rtand-sputnik/>; Response to the Consultation, *supra* note 28, at 10-11.

⁹⁹ See Carrillo, *supra* note 31, at 85.

¹⁰⁰ See generally Andrei Richter, *Sanction law against Russian and Belarusian audiovisual media*, EUROPEAN AUDIOVISUAL OBSERVATORY 1-29 (2022), <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>.

¹⁰¹ *Disinformation and Freedom of Opinion*, *supra* note 1, at para. 26.

¹⁰² *Id.* at para. 39.

¹⁰³ *Id.* at para. 64.

As propaganda for war is present within social media as well, it is important to assess the actions made by social media companies to restrict or demote it. It turns out that the community standards, opinions, and legal reasoning of Meta’s oversight board have so far failed to address the propaganda issues beyond propaganda of terrorism despite some interest in hate speech.¹⁰⁴

Still, with the start of the full-scale Russian aggression in Ukraine, Meta responded to requests from the governments of Ukraine, the U.K., and the European Union to take steps relating to Russian state-controlled media. “[G]iven the exceptional circumstances,” Meta restricted access to RT and Sputnik accounts across the EU, downranked posts from other Russian state-controlled media, showed people a notice before they share content from these accounts, to let them know that the content comes from Russian state-controlled media, etc.¹⁰⁵

Meta also stopped removing content posted from ordinary Ukrainians expressing their resistance and fury at the invading military forces, which under different circumstances would be considered “hate speech” towards the Russian people.¹⁰⁶ Still it said it would not “tolerate Russophobia or any kind of discrimination, harassment or violence towards Russians on [its] platform.”¹⁰⁷

V. CONCLUSION

Until 2022, Western liberal democracies seemed to be still suffering from the Cold War syndrome when the idea to prohibit propaganda for war and hatred was met by them with a lukewarm response due to fears of harming free expression and suspicion of any ideas coming from the Eastern bloc.¹⁰⁸ In particular, the US officials

¹⁰⁴ Joan Barata, *The Decisions of the Oversight Board from the Perspective of International Human Rights Law*, GLOB. FREEDOM OF EXPRESSION COLUM. UNIV., 1, 4 (2022), <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/10/The-Decisions-of-the-OSB-from-the-Perspective-of-Intl-Human-Rights-Law-Joan-Barata-.pdf>.

¹⁰⁵ *Meta’s Ongoing Efforts Regarding Russia’s Invasion of Ukraine*, META (Mar. 8, 2022, 8:00 AM), <https://about.fb.com/news/2022/02/metas-ongoing-efforts-regarding-russias-invasion-of-ukraine/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See Kearney, *supra* note 26, at 78-79, 111.

commented at *travaux préparatoires* of the ICCPR that the problem of propaganda and incitement was best treated by the “freest possible flow of information making facts available to the people,” as well as by individual self-discipline, “rather than by the enactment of laws that played into the hands of those who would attempt to restrict freedom of speech entirely.”¹⁰⁹ Only the current Russian aggression in Ukraine has provided enthusiasm for concerted international action to curb war propaganda.

If enforced in a judicial manner that is complacent with the rule of law, prohibition of propaganda for war and hatred assists, and does not restrict further enjoyment of freedom of expression. To make this manner effective it should firmly rely on clear-cut definitions and a solid basis in normative acts. So far the practice fails to prove this is the case.

Propaganda, when pervasive, massive, and systematic, is detrimental to freedom of the media. Propaganda destroys the core of the profession of journalism. It makes journalists hostages of sort, typically the government's, and thus hitting at the independence of the media. Journalists are forced or corrupted to be a mere conduit of the messages. If dominant in a given country, propaganda becomes an instrument to establish authoritarianism, thus, distorting not just pluralism of the media but other basic foundations of a democracy. Meanwhile, it affects the public trust in the free media, in the values and the meaning of the profession.¹¹⁰

Dangers of propaganda become a useful excuse for authoritarian governments to restrict or even ban all hostile messages coming from abroad, whether actual or potential. Since about 2015, National media regulators and standard-setting intergovernmental organizations have begun referring to “propaganda for war” when devising ways to block this evasive phenomenon. Propaganda threats give pretext for wider intervention of even the most liberal governments in the media and social media matters, e.g. thru licensing, regulation of transfrontier broadcasting, regulation of political advertising, co-regulation of oversight, and now—sanctions. They also test these tools against the global commitments on freedom of expression, freedom of information, and media freedom.

¹⁰⁹ *Id.* at 103, 119.

¹¹⁰ See generally *Propaganda and Freedom*, *supra* note 55.

Finally, propaganda is especially dangerous when emanating from the state-owned and state-run, also by proxy, media outlets. The use of public funds to impose a one-sided view is a corrupt practice. The two world wars and the Cold War that followed have proven that media in the hands of governments is a dangerous instrument.¹¹¹

Taken together, the changing phenomena of what is “propaganda” and what is “war” give grounds to redefine and expand the understanding of what is “propaganda for war.” The current war in Ukraine and other post-Soviet armed conflicts, military attacks by the radicals in the Middle East are typically accompanied by aggressive propaganda, providing certain urgency in researching this issue.

The contemporary response reminds of the early ideas on countermeasures against propaganda for war. The suggestions by the World Peace Congress of *boycott* can be linked to the European Commission’s ban (or sanctions, “special economic measures”) on propaganda broadcasters. The call to further *education* is visible in the “empowering users” through “media information literacy,” while the historical call for journalists to *refrain* from being involved in propaganda—in the particular promotion of the “integrity of services” and support for “quality journalism” today.¹¹²

“The prohibition of propaganda for war should be interpreted narrowly to ensure that it does not infringe on the right to protest and criticize,”—calls the Report by the UN Special Rapporteur.¹¹³ This study of the international law and policy on propaganda pitches for the first step to be a clearer distinction between propaganda for war, which may and should be prohibited, and any other propaganda which is not banned in the IHRL. The next step should indeed be a reinterpretation of war propaganda in full compliance with the existing international norms, and taking into consideration modern means of propaganda. Only then the governments could engage in negotiations, as to what should be done with other harmful propaganda.

As to the correlation of the ban on war propaganda and ban on disinformation, these seem to be different issues demanding various approaches. Any propaganda content, including incitement to

¹¹¹ *Id.*

¹¹² Council of Europe Press Release, *Council of Europe Calls on States to Support Quality Journalism: New Guidelines*, (Mar. 17, 2022), <https://www.coe.int/en/web/portal/-/council-of-europe-calls-on-states-to-support-quality-journalism-new-guidelines>.

¹¹³ *Disinformation and Freedom of Opinion*, *supra* note 1, para. 105.

aggression, might contain disinformation, be based on disinformation, or conspiracy theories, or on truthful facts. “True or false?” here neither plays a crucial role nor provides a definite response. It is another reason why disinformation should not be banned as such. States should not prohibit or restrict it unless it meets the requirements of legality, necessity, and legitimate aims as set out in Article 19 or unless propaganda, instrumentalized with falsities, amounts to incitement prohibited by Article 20 of the ICCPR.¹¹⁴

Politicians create confusion with their ideas of overbroad bans and safety nets; they create ambiguities, uncertainties, and perceived gaps in international legal standards. Those standards perhaps could be finetuned in the future, but first they should be strictly implemented.

¹¹⁴ *Id.* at para. 113.