

## **Modern perception of “propaganda for war”: International response to hostile speech in the post-Soviet armed conflicts**

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Despite initial hopes, the fall of the Soviet Union in the end of 1991 and the resulting end of the Cold War have not brought stable democracy, peace and security, or prosperity to the newly independent nations. With time, the tensions and aggression have actually increased. Post-Soviet history is abundant with examples of funneling such aggression and incitement of racism and intolerance giving rise to military hostilities, possible genocide and crimes against humanity. The full-scale war in Ukraine and the armed conflicts between Armenia and Azerbaijan in 2020 and 2022 over Nagorno-Karabakh, or Artsakh, are just the most recent examples of long-running disputes between the governments and the nations in the region.

“Propaganda and distorted narratives from various parties in the conflict area and outside have hindered conflict resolution and peace processes for decades”, — noted in 2022 the UN Special Rapporteur on freedom of expression. As an example, she gave the protracted conflict situation in Nagorno-Karabakh.<sup>1</sup>

### **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. He made 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.”<sup>2</sup>

The wise use of propaganda during the first World War by the U.S. government he described in the following words:

“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

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<sup>1</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 26. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>

<sup>2</sup> Edward L. Bernays, *Propaganda* (1928), <http://www.historyisaweapon.org/defcon1/bernprop.html>.

the mental clichés and the emotional habits of the public to produce mass reactions against the alleged atrocities, the terror and the tyranny of the enemy.”<sup>3</sup>

After the second World War the term “propaganda” became taboo as it was connected with the Nazis and Goebbels and their evil manipulation of the masses. At the start of the Cold War, of public concern became the propaganda of aggression. To prevent new wars the United Nations committed themselves to stop such malicious propaganda.

“Propaganda for war” is a long-standing internationally recognized violation of human rights. While the provisions of Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR) on freedom of expression and its possible limitations are well-researched and rehearsed, there is less academic and political focus on Article 20, which stipulates:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.<sup>4</sup>

The limited academic research given in the post-war decades to the interpretation and practical implementation of the ban on such media-driven propaganda in both international and national law and policy is probably explained by the scarcity of caselaw on such propaganda in the democratic states.

At the same time, the importance of efforts to prevent wars and discrimination in relation to the values of human rights became widely understood and clearly formulated. Propaganda for war results in abuses of the core human rights stipulated in the ICCPR, such as the right to life. In fact, an exercise of freedom of expression for propaganda for war has a direct or collateral aim at the humanity itself.

We see, that both West and East, North and South have agreed on these postulates. But their interpretations were somewhat different.<sup>5</sup>

In the communist world, the phenomenon got a clearly ideological meaning. In the definitional context it is worth noting a set of eight historic legal acts, national laws “On the protection of peace” which were adopted in 1950-1951 by a number of socialist countries, from Albania to Mongolia.<sup>6</sup> These statutes and the relevant national penal provisions were in fact directed at propaganda for war and nothing else.<sup>7</sup> Formally, they were adopted in

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<sup>3</sup> Ibid.

<sup>4</sup> Art. 20 of the International Covenant on Civil and Political Rights, 16 December 1966, URL:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>5</sup> See more on the interplay of propaganda for war and freedom of expression in: Richter, Andrei. The Relationship between Freedom of Expression and the Ban on Propaganda for War. European Yearbook on Human Rights 2015. W. Benedek, F. Benoît-Rohmer, M. Kettemann, B. Kneihls, M. Nowak (Eds.). Graz : Intersentia, 2015. P. 489-503.

<sup>6</sup> Such as the USSR Statute “On the Protection of Peace” of 12 March 1951, which was annulled only in December 2012, see [https://pravo.by/upload/pdf/krim-pravo/o\\_zachite\\_mira\\_1951\\_goda.pdf](https://pravo.by/upload/pdf/krim-pravo/o_zachite_mira_1951_goda.pdf). A ban on propaganda of war was even entered in the USSR Constitution of 1977 (Art. 28), see <https://www.hist.msu.ru/ER/Etext/cnst1977.htm>, but not transposed into the succeeding Russian Constitution of 1993.

<sup>7</sup> E.g., in Russia: Art. 71 of the 1960 Criminal Code (imprisonment from 3 to 8 years), Art. 354 of the 1996 Criminal Code (maximum penalty – five years’ imprisonment).

response to the call of the Second World Peace Congress (Warsaw, November 1950) to the parliaments of the world to outlaw “propaganda favouring a new war”.<sup>8</sup>

The World Peace Movement of the times, strongly supported by the USSR, Western left-leaning organizations and intellectuals, was extremely vocal on the need to diminish the threat of use of atomic weapons and to stop war propaganda – two topics which became also prominent in the today’s news agenda.

The movement 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, organisations, 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.” 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. Moreover, the media workers were specifically appealed 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.”<sup>9</sup>

In practice, though, the communist laws for the protection of peace were generally used to stop dissemination of Western narratives from abroad as “warmongering” and to punish political dissidents as “acolytes” of the “blood-thirsty” militarists and imperialists.<sup>10</sup> Conveniently enough, the laws against “propaganda for war” were overbroad as to the definition of the phenomenon.

On the other hand, some Western countries, such as the Belgium, Denmark, Finland, Iceland, Malta, Netherlands, New Zealand, Norway, Sweden, Switzerland, U.K. and U.S. made reservations as to their obligation to enact national legislation in the field of propaganda for war, sometimes with reference to the fact that such a prohibition could limit the freedom of expression.<sup>11</sup>

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<sup>8</sup> “Address to the United Nations”, Para 5, says: “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.” See: British Peace Committee, “We Can Save Peace: Story of the Second World Peace Congress, Warsaw 1950”, N/D, p. 10, <http://lib-lespaul.library.mun.ca/PDFs/radical/WeCanSavePeaceTheStoryoftheSecondWorldPeaceCongressWarsaw1950.pdf>.

<sup>9</sup> “Extract from the Resolution of the Commission on the Outlawing of War Propaganda”, In “We Can Save Peace”, op.cit., p. 12.

<sup>10</sup> Richter, Andrei. The Relationship between Freedom of Expression and the Ban on Propaganda for War. European Yearbook on Human Rights 2015. W. Benedek, F. Benoît-Rohmer, M. Kettmann, B. Kneihls, M. Nowak (Eds.). Graz: Intersentia, 2015. P. 489-503.

<sup>11</sup> UN Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND)

Despite the controversy, several resolutions of the UN General Assembly (UNGA) were adopted at the earlier stage of efforts against propaganda for war, they read as if they were written not 70 years ago, but in the last year or so.

Resolution 290 (IV) from 1949 suggests to promote “full freedom for the *peaceful* expression of political opposition” and to “remove the barriers which deny to peoples the free exchange of information and ideas” – but whenever it is “essential to international understanding and peace”. It calls on the five permanent members of the UN Security Council to to “exercise restraint in the use of the veto” in order to make this body an effective “instrument for maintaining peace.”<sup>12</sup>

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.”<sup>13</sup> The UN thus gave an intent or a threat of hostilities as the criteria for the illegal act.

It is important to note that then the General Assembly further elaborated on the definition of the 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.” 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.”<sup>14</sup>

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 and/or deprived of its 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.<sup>15</sup> Although the OSCE commitments are not legally binding they establish or confirm statements of principle.

A 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”.<sup>16</sup> He considers that the key

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<sup>12</sup> Resolution adopted by the General Assembly 290 (IV). “Essentials of Peace”, 1 December 1949. URL: <http://www.un-documents.net/a4r290.htm>.

<sup>13</sup> Resolution adopted by the UN General Assembly 110 (II). “Measures to be taken against propaganda and the inciters of a new war”. 3 November 1947. URL: <http://www.un-documents.net/a2r110.htm>.

<sup>14</sup> Resolution adopted by the General Assembly of the United Nations 381 (V). “Condemnation of propaganda against peace”, 17 November 1950. URL: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/059/79/PDF/NR005979.pdf?OpenElement>.

<sup>15</sup> Conference on Security and Co-operation in Europe. Final Act (Helsinki, 1975). URL: <http://www.osce.org/mc/39501?download=true>

<sup>16</sup> Kearney, Michael G. *The Prohibition of Propaganda for War in International Law*. Oxford University Press, 2007. p. 189.

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.<sup>17</sup> There are also doubts as to whether this prohibition can be applied during an armed conflict, or is appropriate only in times of peace.<sup>18</sup>

Any distinct formula of propaganda will follow the 1947 UNGA resolution and will have to take into account the scope of the crime suggested in 1983 by the UN Human Rights Committee (UNHRC) in its General comment No. 11, which is devoted to interpretation and compliance with Article 20. This 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.<sup>19</sup>

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”.<sup>20</sup> By self-defense, the Charter means exclusively measures taken by a Member of the United Nations “if an armed attack occurs against” it.<sup>21</sup> It is important to note the comment of the UNHRC that, for the purposes of the ban, it does not matter “whether such propaganda or advocacy has aims which are internal or external to the State concerned”.<sup>22</sup> This conclusion underlines the transborder nature of the prohibition.

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.”<sup>23</sup>

Lumley (1933) put the set of methods more briefly: they are a combination of “suppression, distortion, diversion and fabrication.”<sup>24</sup>

## Role of State

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<sup>17</sup> Op.cit., P. 5-6.

<sup>18</sup> Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 *Fordham J. Int'l L.* 57 (2023). – P. 118. “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 39. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>

<sup>19</sup> United Nations Human Rights Committee (19th session). Geneva (29 July 1983). General comment No. 11 “Prohibition of propaganda for war and inciting national, racial or religious hatred (Article 20)”. Paragraph 2. URL: <http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>.

<sup>20</sup> Ibid.

<sup>21</sup> Charter of the United Nations, San Francisco (26 June 1945), Art. 51, <http://www.un.org/en/documents/charter/chapter7.shtml>

<sup>22</sup> General Comment No. 11, op. cit, para 2.

<sup>23</sup> Nowak, Manfred. (2005). *U.N. Covenant on Civil and Political Rights – CCPR Commentary*, (2nd rev. ed.). Kehl am Rhein, Germany: Engel. P. 472.

<sup>24</sup> Frederick E. Lumley, *The Propaganda Menace* (1933), 116-117.

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

Scholars argue that while powerful media corporations are indeed able to use their own initiative and means to disseminate such propaganda, which, say, a beleaguered government torn by civil strife cannot counteract, it is unlikely to be “launched without at least implicit support of a third state.”<sup>25</sup> Therefore, the operation and dominance of the loyal media operated and/or controlled by the State in some of the post-Soviet countries<sup>26</sup>, which in itself is a legacy of the communist times of thought control, seems to enable and legitimize the phenomenon.

Role of the authoritarian state in the times of dominant traditional media stays big in the modern world of tremendous significance of the social media, blogging and citizen journalism. Without trolls and DDoS attacks sponsored by governments, manipulating users’ minds will not be as effective today – if effective at all.<sup>27</sup>

No wonder, the Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, adopted in 2017 by four Special Rapporteurs appointed by international organisations,<sup>28</sup> 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).” Instead, state actors should “take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest...”<sup>29</sup>

This followed the idea, expressed earlier 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.”<sup>30</sup>

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<sup>25</sup> Kearney, Michael G. *The Prohibition of Propaganda for War in International Law*. Oxford University Press, 2007. P. 9, see also p. 101, 134. 142-145, 168.

<sup>26</sup> 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.

<sup>27</sup> Richter, Andrei. *The Relationship between Freedom of Expression and the Ban on Propaganda for War*. European Yearbook on Human Rights 2015. W. Benedek, F. Benoît-Rohmer, M. Kettemann, B. Kneihls, M. Nowak (Eds.). Graz : Intersentia, 2015. P. 494.

<sup>28</sup> Joint Declaration on Freedom of Expression and "Fake News," Disinformation and Propaganda, <http://www.osce.org/fom/302796?download=true> .

<sup>29</sup> Joint Declaration on Freedom of Expression and "Fake News," Disinformation and Propaganda , <http://www.osce.org/fom/302796?download=true>. This thesis was also recalled in the report by the UN Special Rapporteur on Freedom of Expression and Opinion “Disinformation and freedom of opinion and expression”, A/HRC/47/25 (Apr. 13 2021).

<sup>30</sup> Communiqué by OSCE Representative on Freedom of the Media on propaganda in times of conflict, 15 April 2014. <https://www.osce.org/fom/117701>.

These rapporteurs also directly pointed to the propaganda for war by the Russian Federation authorities when calling, in 2022, “to immediately refrain from these unlawful practices”.<sup>31</sup>

### Scope of modern war and its propaganda

Today, *propaganda* benefits from a wide use of modern technologies that enable to multiply its messages and deliver them instantly to the targeted audience around the world. Thus, what was considered propaganda just years ago has new dimensions to 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 increased manifold, as millions of Internet users worldwide started to play an important role in international conflicts simply by posting information, in either text or image format, to a website.<sup>32</sup>

A major role in modern conflicts is played by social media. They enable people to remain connected to family, friends and the outside world and to access a wide range of information, which includes disinformation, propaganda and hate speech.<sup>33</sup>

The notion of “*war*” has also 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, the wars in today’s “real-world” are no more started with a formal ultimatum or declaration of war handed by an ambassador of the aggressor state. They are typically not ended with a formal peace treaty, thus staying with us as “frozen conflicts”.

Modern wars have a more significant use of information as a weapon. In this regard, allow me to briefly introduce the key elements of the weapon. They are *cyberwars, information operations, information warfare and hybrid wars*.

Digital wars take place in cyberspace, presenting significant threats to the 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.”<sup>34</sup> Cyber warfare raises questions about precisely how certain provisions of law on armed conflicts, or international humanitarian law (IHL),

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<sup>31</sup> UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS. Ukraine: Joint Statement on Russia’s Invasion and Importance of Freedom of Expression and Information, (May 4, 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom>.

<sup>32</sup> Kenneth Geers. *Cyberspace and the Changing Nature of Warfare*. Tallinn: Cooperative Cyber Defence Centre of Excellence, 2018 (?). Part 3.0.

[https://ccdcoe.org/uploads/2018/10/Geers2008\\_CyberspaceAndTheChangingNatureOfWarfare.pdf](https://ccdcoe.org/uploads/2018/10/Geers2008_CyberspaceAndTheChangingNatureOfWarfare.pdf)

<sup>33</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 3. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>

<sup>34</sup> International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions. A Report. Geneva: The International Committee of the Red Cross (ICRC) International Centre, 2020 (?), P. 26. [https://www.icrc.org/sites/default/files/document/file\\_list/challenges-report\\_new-technologies-of-warfare.pdf](https://www.icrc.org/sites/default/files/document/file_list/challenges-report_new-technologies-of-warfare.pdf)

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.”<sup>35</sup> Are cyberattacks just other types and elements of commonly understood traditional wars, or are they stand-alone phenomena that should be treated differently than traditional wars in the law?<sup>36</sup>

A military/academic project called “Tallinn Manual” elaborates a lot on this question.<sup>37</sup> The project reminds that traditionally only significant injury or physical damage qualify as an armed attack. Typically, a hostile cyber operation does not permit a non-cyber operation, although it indicates that there is a right to self-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”. Thus, the experts see “a degree of movement” here.<sup>38</sup>

Another expert in cyber defense even equals cyberattacks with propaganda. He describes propaganda as “often both the easiest and the most powerful cyber attack”. 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.”<sup>39</sup> The author provides as an example the case in April 2007, when a DDoS attack from Russia on Estonian government, its law enforcement, banking, media, and Internet infrastructure lasted for three weeks, while a hacker defaced the Estonian ruling political party website, changing the homepage text into a threatening note.<sup>40</sup>

I believe that propaganda, like a cyberattack, may make serious and lasting harm to the civilian population. The mental health is traumatized through extreme endurance of fear or grief, through developed paranoia caused by conspiracy theories, and so on.

Still, I think that a warfare in cyberspace should be separated from digital propaganda – the key element of an “information warfare” and/or “information [special] operations” – and treated differently. “*Information operations*”, are understood as “campaigns by States or political actors to influence the views, attitudes and behaviour of adversaries or the public in order to achieve political and military objectives.”<sup>41</sup>

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<sup>35</sup> Jonathan Horowitz. Cyber Operations under International Humanitarian Law: Perspectives from the ICRC. The American Society of International Law, *Insights*, 24 (11), 19 May 2020. [https://www.asil.org/insights/volume/24/issue/11/cyber-operations-under-international-humanitarian-law-perspectives-icrc#\\_ednref8](https://www.asil.org/insights/volume/24/issue/11/cyber-operations-under-international-humanitarian-law-perspectives-icrc#_ednref8)

<sup>36</sup> The latter was the argument in a U.S. court: *Merck & Co v Ace American Insurance Co*, No: UNN-L-2682-18.

<sup>37</sup> Michael N. Schmitt (ed.), TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS. Cambridge: Cambridge University Press, 2013.

<sup>38</sup> See: <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/>

<sup>39</sup> Kenneth Geers. Cyberspace and the Changing Nature of Warfare. Tallinn: Cooperative Cyber Defence Centre of Excellence, 2018 (?). Part 2.2.

[https://ccdcoe.org/uploads/2018/10/Geers2008\\_CyberspaceAndTheChangingNatureOfWarfare.pdf](https://ccdcoe.org/uploads/2018/10/Geers2008_CyberspaceAndTheChangingNatureOfWarfare.pdf)

<sup>40</sup> Op. cit. Part 7.

<sup>41</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 15. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>



Information instruments of a war, such as propaganda and disinformation, including propaganda for war – among troops, civilian population, potential friends and foes in the international arena – have traditionally been an element of an armed conflict. These days they are definitely “cyber-enabled”. While cyberattacks *per se* are effectively responded with strengthening cyber defense, temporary internet shutdowns, and/or with cyber counterattacks, “government counter-propaganda” is not considered by media experts an appropriate answer to malicious propaganda.<sup>42</sup>

“*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 destabilise the political, economic and social situation of a country under attack”.<sup>43</sup> Russian military doctrine, for example, explicitly recognises information warfare as one of its domains.<sup>44</sup>

In their turn, modern *hybrid wars* necessarily include cyberwars, inasmuch as information warfare is an element of an armed conflict. In both hybrid war and armed conflict, arms are to be used, thus they might truly qualify as wars. At the same time, information war and cyberwar are unlikely to be qualified today in the same manner.

Now, let us combine the modern notion of war with the modern means of its propaganda. Is propaganda for information war a form of propaganda for war as understood by the ICCPR? I doubt it. Is calls for cyber aggression a propaganda to be prohibited? Probably, yes.

### **Modern response to propaganda**

Aggressive propaganda and propaganda of aggression came into the international agenda with the start of the conflict in and around Ukraine in 2014. A reassessment of what is to be done with them jumped high in the agenda of the states and intergovernmental organizations.

First came “Propaganda and Freedom of the Media” (2015), a non-paper for the OSCE participating States, published by its Representative on Freedom of the Media wherein this author brought the issue of propaganda for war back to the attention of scholars, diplomats and politicians.<sup>45</sup> In 2016, though, despite significant efforts of the 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 opposition from the U.S. and Holy See delegates.

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<sup>42</sup> “Propaganda and Freedom of the Media”. Vienna: OSCE Representative on Freedom of the Media, p. 7. <https://www.osce.org/files/f/documents/b/3/203926.pdf>.

<sup>43</sup> European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)). Para D. <https://tinyurl.com/ydyfy89k>.

<sup>44</sup> Michael Kofman, Anya Fink, Dmitry Gorenburg, Mary Chesnut, Jeffrey Edmonds, and Julian Waller. “Russian Military Strategy: Core Tenets and Operational Concepts”. Washington, DC: Center for Naval Analyses (CNA), 2021. – P. 24. [https://www.cna.org/archive/CNA\\_Files/pdf/russian-military-strategy-core-tenets-and-operational-concepts.pdf](https://www.cna.org/archive/CNA_Files/pdf/russian-military-strategy-core-tenets-and-operational-concepts.pdf).

<sup>45</sup> “Propaganda and Freedom of the Media”. Vienna: OSCE Representative on Freedom of the Media, <https://www.osce.org/files/f/documents/b/3/203926.pdf>

At about the same time – on an initiative of the Estonian, Lithuanian, Danish and British Foreign Ministers<sup>46</sup> – started an intense activity of the institutions of the European Union (EU) on disinformation, including in the context of propaganda for war. They have consistently adopted – and implemented, in 2015-22, – a number of resolutions, strategic communications and action plans directed, in particular, to set perimeter barriers for war propaganda and hybrid aggressions. Among intergovernmental organizations, the EU, has provided, probably, the most comprehensive political response. It consists of the *Action Plan on Strategic Communication*<sup>47</sup> the European Parliament’s resolution on *EU strategic communication to counteract propaganda against it by third parties*<sup>48</sup>, the Communication *Tackling online disinformation: A European approach*,<sup>49</sup> *Code of Practice on Disinformation*<sup>50</sup>, the European Commission’s *Action Plan against Disinformation*<sup>51</sup>, the European Commission’s *European Democracy Action Plan*<sup>52</sup>, and – last but not the least – the 2022 *Digital Services Act*,<sup>53</sup> that transforms the *Code of Practice on Disinformation* into *Strengthened Code of Practice*<sup>54</sup>.

Additionally, in 2022, the European Commission created a “crisis mechanism” through the enactment of the Digital Services Act (“DSA”).<sup>55</sup> This novel mechanism 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”.<sup>56</sup>

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<sup>46</sup> “Estonia, Lithuania, UK, Denmark call for EU action on Russian information warfare; Latvia refuses to join.” The Baltic Times. 15 Jan. 2015. URL:

[http://www.baltictimes.com/estonia\\_lithuania\\_uk\\_denmark\\_call\\_for\\_eu\\_action\\_on\\_russian\\_information\\_warfare\\_latvia\\_refuses\\_to\\_join/](http://www.baltictimes.com/estonia_lithuania_uk_denmark_call_for_eu_action_on_russian_information_warfare_latvia_refuses_to_join/)

<sup>47</sup> EU Action Plan on Strategic Communication (Ref. Ares(2015)2608242 – 22.6.2015).

<sup>48</sup> European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)), [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0441\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0441_EN.html).

<sup>49</sup> 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”. COM/2018/236 final. 26 April 2018. <https://bit.ly/2rz2WrW>

<sup>50</sup> Code of Practice on Disinformation, 2018. <https://digital-strategy.ec.europa.eu/en/library/2018-code-practice-disinformation>.

<sup>51</sup> [https://www.eeas.europa.eu/node/54866\\_en](https://www.eeas.europa.eu/node/54866_en)

<sup>52</sup> 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”, COM/2020/790 final. 3 December 2020. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

<sup>53</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), PE/30/2022/REV/1. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>

<sup>54</sup> The 2022 Strengthened Code of Practice on Disinformation. <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>

<sup>55</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en>

<sup>56</sup> 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/>

These documents speak rather on “propaganda warfare” than on “propaganda for war”, the latter though being duly noted in the references to Article 20 of the ICCPR. They also underline that incitement of war “cannot ‘hide’ behind freedom of expression”.<sup>57</sup>

### **Reinterpretation of war propaganda to introduce international sanctions**

**Kiselev.** In parallel to the above response mechanism, since March 2014, the Council of the EU has progressively imposed restrictive measures in respect of actions undermining or threatening 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’” was included on the lists of persons subject to the sanctions provided for the following brief 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.”

Mr Kiselev’s attempt to challenge his personal sanctions was dismissed by the European Court of Justice (CoJ), which, in particular pointed that the applicant was not a regular Russian journalist. On the contrary, 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.”<sup>58</sup>

It is important that the CoJ referred in its decision to a ruling of the Latvian media regulator, that presumably the Council of the EU was aware of. The Court pointed out that the national electronic media regulator — on the basis of a report drawn up by the Latvian police, which had examined the “Vesti nedeli” TV programmes anchored by Mr Kiselyov — considered that those “contained war propaganda justifying the Russian military intervention in Ukraine and comparing defenders of Ukrainian democracy to Nazis.”<sup>59</sup> EU economic measures against Kiselev were used by the Governments of several countries as the reason to additionally sanction the national media subsidiaries of “Rossiya Segodnya”, as economic resources controlled by the sanctioned person. In another set of national cases the “restrictive measures” against Bank Rossiya were used to apply them also to its media company.<sup>60</sup>

**RT & Sputnik.** Following the full-scale invasion of Ukraine by the armed forces of the Russian Federation, the EU banned, in March 2022, the state-owned media outlets RT and Sputnik, as well as their subsidiaries, as one of its sanctions, or “special economic measures” in response

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<sup>57</sup> European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)), Para. 35. [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0441\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0441_EN.html).

<sup>58</sup> *Dmitrij Konstantinovič Kiseľov, vs Council of the European Union*, judgment of the General Court (Ninth Chamber), 15 June 2017. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015TJ0262&from=EN>.

<sup>59</sup> Op.cit. Para 104-105.

<sup>60</sup> See: Cabrera Blázquez F.J., *The implementation of EU sanctions against RT and Sputnik*, European Audiovisual Observatory, Strasbourg, 2022. P.15, 18. See also, Richter, Andrei. Sanction law against Russian and Belarusian audiovisual media. *IRIS Extra*, European Audiovisual Observatory, Strasbourg, 2022. – P. 1-29. <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>

to it.<sup>61</sup> Those media outlets have been targeted as “essential and instrumental in bringing forward and supporting the aggression against Ukraine”.<sup>62</sup> Over the year the ban was expanded to a number of other Russian national TV channels under the state control, mostly with 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,<sup>63</sup> apparently meaning that they met the three-part test of legality, legitimate aim, and necessity and proportionality required by international human rights law. As to the proportionality, the Regulation pointed that these measures “do not prevent those media outlets and their staff from carrying out other activities in the Union than broadcasting, such as research and interviews”, nor did it ban their operation outside of the EU.<sup>64</sup>

**Interpretation.** This time, the restriction was based, additionally, on an indirect interpretation of the “propaganda for war,” while still not using the term in relation to the programming of the Russian channels, but rather hinting at it. For example, the European Council referred to Russia’s “continuous and concerted propaganda actions” to “justify and support its aggression against Ukraine”.<sup>65</sup> In its turn, the European Commission substantiated the sanctions by referring to the “massive propaganda and disinformation” of the Russian outlets about “this outrageous attack on a free and independent country,” 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.”<sup>66</sup> It probably allowed some authors to interpret it by inserting, in square brackets “[pro-war]” before “propaganda” in their reference to this EU decision.<sup>67</sup> 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.” 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 neighbouring countries”.<sup>68</sup>

The abovementioned restrictive measures will be maintained “until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets,

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<sup>61</sup> COUNCIL REG. (EU) 2022/350 OF 1 MAR. 2022 AMENDING REG. (EU) NO 833/2014 CONCERNING RESTRICTIVE MEASURES OF RUSSIA’S ACTIONS DESTABILISING THE SITUATION IN UKRAINE, REG. (EU) 2022/350 (2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0350>.

<sup>62</sup> Op.cit. para (9).

<sup>63</sup> Op.cit. para (10).

<sup>64</sup> Regulation (EU) 2022/350, op.cit., para 11.

<sup>65</sup> Op.cit. para (7).

<sup>66</sup> European Commission, Ukraine: Sanctions on Kremlin-backed outlets Russia today and Sputnik, 2 March 2022.

<sup>67</sup> Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 Fordham J. Int'l L. 57 (2023). – P. 83.

<sup>68</sup> Regulation (EU) 2022/350, op.cit., para 7-9.

cease to conduct propaganda actions against the Union and its Member States”.<sup>69</sup> It is prohibited for “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, 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.” Further, any “broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies” [on the banned media list] was suspended. While it was also prohibited to “participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions”, there are reports of successful flouts by the Russian state media of the prohibitions.<sup>70</sup>

In an interpretation of the reasons of the sanctions, the Denis Diderot Committee<sup>71</sup> 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, legitimisation of possible use of nuclear weapons against ‘40 Nazis States’, announcement that World War III has begun and that Russia must ‘demilitarize NATO’”.<sup>72</sup>

The legality of the sanctions against the Russian media was confirmed by the Court of Justice of the European Union (CJEU).<sup>73</sup> In dismissing the claims of RT, it treated the ban in Article 20(1) of the International Covenant on Civil and Political Rights (ICCPR) broadly by saying that propaganda for war includes also “propaganda of military aggression against Ukraine addressed to the civil society in the Union”. The judgment concluded by saying that the scope of the prohibition imposed by Article 20(1) of the ICCPR includes not only incitement to a future war, but also “comments made continuously, repeatedly and concertedly in favour of an ongoing war”, unleashed contrary to international law, “in particular if these comments come from a media controlled, directly or indirectly, by the aggressor State” (para 210). The importance of the objectives pursued by the sanctions thus “outweigh the negative consequences, however considerable, of these measures for certain [media].”<sup>74</sup> The CJEU did not address arguments of the complainant on censorship or prior restraint in its decision.

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<sup>69</sup> Regulation (EU) 2022/350, op.cit., para 11.

<sup>70</sup> Mark Scott, Russian state media flouts European sanctions. Politico, 20 July 2022, see <https://www.politico.eu/article/russia-europe-sanctions-social-media-rt/amp/>

<sup>71</sup> Comité Denis Diderot / Denis Diderot Committee is a French NGO, aiming at the exclusion of war propaganda and disinformation in the Russian and Belarus electronic media. <https://www.denisdiderot.net/about>.

<sup>72</sup> <https://www.denisdiderot.net/3russianstatety>

<sup>73</sup> Judgment of the General Court of 27 July 2022 – RT France v Council, Case T-125/22 (in French only), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

<sup>74</sup> Judgment of the General Court of 27 July 2022, para. 202 (as translated from French into English).

The EU sanctions against the media were met with certain criticism by the international mandate-holders on freedom of expression,<sup>75</sup> scholars<sup>76</sup> and human right organizations<sup>77</sup> as damaging the recognized interpretation of freedom of the media. Others 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”.<sup>78</sup>

It is worth noting that they followed, to a degree, similar sanctions earlier introduced by Ukraine and some other Eastern European states.<sup>79</sup>

Of importance for the modern response to war propaganda was meant to be the 2022 report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UN Human Rights Council and the General Assembly. Titled “Disinformation and freedom of opinion and expression during armed conflicts”,<sup>80</sup> 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 is propaganda for war], which underlines the need for further clarification”.<sup>81</sup> The Report of the UN Special Rapporteur questions whether there was 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.”<sup>82</sup>

As to the modern media, an analysis of the specific opinions and legal reasoning of the Meta’s Oversight Board based on the company’s Community Standards as to the possibility of restrictions of speech in the contexts of war and armed conflicts might have provided an insight on regulation of “propaganda for war” in the social media.<sup>83</sup> But, alas, it has not been found among the numerous opinions.

## Conclusions

Until 2022, Western liberal democracies seemed to be still suffering from the Cold War syndrome when the idea to refrain from propaganda for war and hatred was met by them with

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<sup>75</sup> UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS. Ukraine: Joint Statement on Russia’s Invasion and Importance of Freedom of Expression and Information, (May 4, 2022), <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom>.

<sup>76</sup> EJIL, The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression, 30 March 2022;

<sup>77</sup> European Federation of Journalists, Fighting disinformation with censorship is a mistake, 01 March 2022; IPI, Statement on banning of RT and Sputnik, 04 March 2022;

<sup>78</sup> Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 Fordham J. Int’l L. 57 (2023). – P. 85.

<sup>79</sup> Richter, A. Sanction law against Russian and Belarusian audiovisual media. *IRIS Extra*, European Audiovisual Observatory, Strasbourg, 2022. – P. 1-29. <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>

<sup>80</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 26. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>

<sup>81</sup> *Ibid.*, para 39.

<sup>82</sup> *Ibid.*, para 64.

<sup>83</sup> Barata, Joan. *The Decisions of the Oversight Board from the Perspective of International Human Rights Law*, Columbia Univ., 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>.

lukewarm response due to fears of harming free expression and suspicion of anything coming from the Soviet bloc.<sup>84</sup> In particular, the US officials commented at *travaux préparatoires* of Article 20 (1) 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”.<sup>85</sup> The current aggression in Ukraine has provided enthusiasm for concerted international action to stop it.

If enforced in a judicial manner that is complacent with the rule of law, prohibition of propaganda for war and hatred assists and not restricts 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 it is pervasive, massive and systematic, is detrimental to freedom of the media. This phenomenon destroys the core of the profession of journalism. It makes journalists hostages of some sort, typically the government’s and thus, hitting at the independence of the media. Journalists are forced or bribed 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.<sup>86</sup>

Then, dangers of propaganda become a useful excuse for governments to restrict or even ban all hostile messages, actual and potential, coming from abroad. Its threat gives a pretext for wider intervention of governments in the media and social media matters, such as licensing, transfrontier broadcasting, oversight.

In addition, international and national policies countering of “war propaganda” becomes an ever-increasing instrument of stopping alien speech not only in the post-Soviet region, but all over the world. National media regulators and standard-setting intergovernmental organizations have started, since about 2015, referring to “propaganda for war” when devising ways to block this evasive phenomenon. They also test these ways against the global commitments on freedom of expression, freedom of information and on media freedom.

Finally, propaganda is especially dangerous when emanating from the state-owned and state-run, also by proxy, media outlets. A 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.<sup>87</sup>

Still, the contemporary response reminds me 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 seen in the “empowering users” through “media information literacy”, while the 1950 call to journalists to *refrain* from being

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<sup>84</sup> Kearney (2007), 78-79, 111.

<sup>85</sup> Ibid., 119, 103.

<sup>86</sup> <https://www.osce.org/files/f/documents/b/3/203926.pdf>

<sup>87</sup> <https://www.osce.org/files/f/documents/b/3/203926.pdf>

involved in propaganda – in the particular promotion of the “integrity of services” and support for “quality journalism” today.

“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.<sup>88</sup> My study of the international law and policy on the propaganda persuades me that the first step should be a clearer distinction between propaganda for war, which may and should be prohibited, and any other propaganda which is not banned in international law. The next step should indeed be a narrow interpretation of the war propaganda in full compliance with the existing international norms and national law. Then the governments could engage in negotiations, as to what is to be done with other harmful propaganda

Taken together, the changing phenomena of what is “propaganda” and what is “war” give grounds to redefine and/or expand 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 typically accompanied by aggressive propaganda, provide certain urgency in researching this issue.

As to 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 aggression, might contain disinformation, or be based on disinformation, or on conspiracy theories, or on truthful facts. True or false here does not play a crucial role.

Therefore, disinformation should not be banned as such. States should not prohibit or even restrict it unless they meet the requirements of legality, necessity and legitimate aim as set out in article 19 (3) or amount to incitement in line with Article 20 of the International Covenant on Civil and Political Rights.<sup>89</sup>

A confusion created by politicians with their overbroad bans creates ambiguities, uncertainties and perception of gaps in international legal standards. Those standards perhaps could be finetuned in the future, but first they should be strictly implemented.

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<sup>88</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 105. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>

<sup>89</sup> “Disinformation and freedom of opinion and expression during armed conflicts”. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/77/288, 12 August 2022. Para 113. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/459/30/PDF/N2245930.pdf?OpenElement>