

found so far. Some believe “fake news” is the old media practice of disseminating “false information” that was somewhat dealt with by the League of Nations in the 1930s. Others see “fake news” as a new threat and challenge to democracy and international order. This article will differentiate disinformation and fake news notions and link the latter with the current spread of manipulation in the media.

Further, this article will summarize the modern response to “fake news.” The most recent provisions of the UN, EU and Council of Europe (including the European Court of Human Rights) acts will be analyzed. The decisions

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various contexts that all claim to share common global values of free speech and free media.

II. ENVIRONMENT AND DEFINITIONS

The current ecosystem of false information online is characterized by Syed as a set of the following distinct features: filters – communities – amplification – speed – profit incentives.³

A. *Filters*

As Syed observes, “an obvious feature of online speech is that there is far too much of it to consume.”⁴ Syed continues stating that “the networked, searchable nature of the internet yields two interrelated types of filters” which are categorized as “manual filters,” or “explicit filters.”⁵ “Explicit filters” include search terms or Twitter hashtags, which can be used to prompt misinformation. “Implicit filters” are things like algorithms that either watch one’s movements or change based on how one manually filters which explains the way platforms decide what content to serve an individual user in order

and potentially questionable decisions about how to determine truth—an

E. *Profit Incentives*

Syed states that “social media platforms make ‘fake news’ uniquely lucrative.” Syed notes that:

Advertising exchanges compensate on the basis of clicks for any article, which creates the incentive to generate as much content as possible with as little effort as possible. False news, sensationalist in its nature, fits these up-front economic incentives.¹⁵

Syed finds two noteworthy elements to this “uptick:” First, the mechanics of advertising on these platforms such as cheap distribution means more money.¹⁶ Second, the appearance of advertisements and actual news appear almost identical on these platforms which “further muddies the water between what is financially motivated and what is not.”¹⁷

The first known mentions of the phrase “fake news” trace back to the 19th century, but its use mostly remained dormant until the 2016 US presidential election campaign.¹⁸ Still the Google Books search tool shows that there was no significant number of mentions of the term until the 1990s.¹⁹ The usage of the term on the internet skyrocketed in fall 2016, and it was picked as word of the year, first, for 2016, by the Australian Macquarie Dictionary and then, for 2017, by the UK-based Collins Dictionary, which said usage of the term increased 365 percent in 2017.²⁰

propaganda” to distribute large amounts of misinformation over social media platforms); Philip N. Howard & Bence Kollanyi, *B*

There appears to be no consistent, clear,

traffic / the incorrect information being passed along by social media.”²⁷ A professor of journalism proposes the following definition: “topical information that is false by design and is disseminated through social media.”²⁸

between 2003 and 2017 allowed Tandoc, et. al. to determine six ways to define “fake news”: satire, parody, fabrication, manipulation, propaganda, and advertising. These definitions are based on two dimensions: levels of facticity and deception.

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would not cure the evil. The cause of objectionable reports was political and could not be decided by tribunals.”⁵⁰

The provision on false reports was narrowly voted down in 1950 in the UN Commission on Human Rights (6:5 with four abstentions).⁵¹ In further discussions, now within the Third Committee of the UN General Assembly (1952) a ban on “dissemination of slanderous rumours which undermined relations between States” was reintroduced as part of the prohibition of war propaganda and incitement to national, racial or religious hatred, though also not for long.⁵² The drafters of the European Convention on Human Rights also considered the above UN’s language, but they too opted not to incorporate it.⁵³

Post-World War II both Articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR) are a good reminder of both the essence of freedom of expression and the responsibilities that its exercise carries alongside. The former says:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (order public), or of public health or morals.⁵⁴

Article 20 stipulates:

1. Any propaganda for war shall be prohibited by law.

50. *Commission on Human Rights, Sixth Session Provisions Concerning Freedom of Information in the Draft Covenant on Human Rights*, U.N. ECONOMIC AND SOCIAL COUNCIL, U.N. Doc. E/CN.4/360, May 2, 1950.

51. KEARNEY, *supra* note 49, at 85, 89-90.

52. *Id.* at 116.

53. Tarlach McGonagle, “Fake News”: *False Fears or Real Concerns?*, 35 NETHERLANDS

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.⁵⁵

Relevant UN human rights bodies have made it clear that criminalizing “false” news is inconsistent with the right to freedom of expression. For example, commenting on the domestic legal system of Cameroon, the UN Human Rights Committee stated that “the prosecution and punishment of journalists for the crime of publication of false news merely on the grounds, without more, that the news was false, [is a] clear violation of Article 19 of the Covenant.”⁵⁶

On another occasion, the UN Human Rights Committee pointed that the sections of the media law dealing with false information unduly limited the exercise of freedom of opinion and expression as provided for under Article 19 of the Covenant. In this connection, the Committee was

concerned that those offences carried particularly severe penalties when criticism was directed against official bodies as well as the army or the administration, [. . .] a situation which inevitably resulted in self-censorship by the media when reporting on public affairs.⁵⁷

On yet another occasion, the UN Human Rights Committee reiterated that false news provisions “unduly limit the exercise of freedom of opinion and expression.”⁵⁸ It has taken this position even with respect to laws which only prohibit the dissemination of false news that causes a threat of public unrest.⁵⁹

In 2000, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression urged all Governments to ensure that “press offenses are e (a) 92.3 h6 (n) 21.7 (i) -ke

broadcasting “false” or “alarmist” information, where “prison terms are both reprehensible and out of proportion to the harm suffered by the victim [...] as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights.”⁶¹

Finally, in 2017 the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression together with 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 Special Rapporteur on Freedom of Expression and Access to Information issued a Joint declaration on freedom of expression and “fake news,” disinformation and propaganda (to be reviewed below).⁶²

B. Right of Correction or Reply

Related to the issue of false information in the context of international organizations is the debate and conclusions reached at different fora on the right to correction or reply as both a defense from information attacks from one state against another and as a human right.

In early 1950s a French initiative led the UN General Assembly to adopt the *Convention on the International Right of Correction* aimed to maintain peace and friendly relations among nations.⁶⁴ It considered that,

as a matter of professional ethics, all correspondents and information agencies should, in the case of news dispatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such dispatches

(both the “correspondents” and “information agencies” were broadly defined therein).⁶⁵

The Convention acknowledged the impracticality to establish an international procedure for verifying the accuracy of media reports that might lead to the imposition of penalties for the dissemination of false or distorted reports. However, it did prescribe that if a contracting State’s international relations or “national prestige or dignity” suffers from false or distorted by a news dispatch, it has the right to submit its version of the facts to those States where such dispatch has been disseminated, with a copy to the journalist and

a person responsible who is not protected by immunities or special privileges.⁶⁷

The problem with the above provisions might include the presumed automatic nature of the right of reply if any “inaccurate” statements – or ideas [*sic*] are disseminated. Interestingly enough, the right to refute ideas stands only in the English official translation, while the Spanish original or other translations of the norm do not contain the word.⁶⁸ Still the Inter-American

2. For this purpose, the name of the programme service or of the broadcaster responsible for this programme service shall be identified in the programme service itself, at regular intervals by appropriate means.⁷¹

According to the Convention's *Explanatory Report* a right of reply within the meaning of the Convention is a right exercised by a natural or legal person in order to correct inaccurate facts or information, in cases where such facts or information concern him/her or constitute an attack on his/her legitimate rights (especially in regards to his or her dignity, honor or reputation). The modalities of exercise of this right are determined by the transmitting party: right of reply, right of correction, right of rectification, right of recourse to special bodies or procedures. A right of reply or other comparable legal or administrative remedies are transfrontier in character. Therefore, they may be exercised equally by nationals and non-nationals, residents and non-residents of Parties to the Convention.⁷²

A basis for this provision is the 1974 Council of Europe *Resolution on the Right of Reply*.⁷³ Its aim was to:

and, if necessary, introduce in their domestic law or practice a right of reply or any other equivalent remedy, which allows a rapid correction of incorrect information in online or off-line media along the lines of eight particular minimum principles. The right of reply in its view should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights, while the dissemination

The Resolution described the current situation as a growing, systematic pressure upon Europeans to tackle information, disinformation and misinformation campaigns and propaganda from countries and non-state actors (such as transnational terrorist and criminal organizations) in its neighborhood, which are intended to undermine the very notion of objective information or ethical journalism, casting all information as biased or as an instrument of political power, and which also target democratic values and interests. The European Parliament saw that targeted information warfare, once extensively used during the Cold War, is back as an integral part of modern hybrid warfare, 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, without a formal declaration of war.⁸³

Therefore, the European Parliament encouraged legal initiatives and a “truly effective strategy” to be developed at the international and nation levels to provide more accountability when dealing with disinformation. Apparently, these legal efforts should provide and ensure a framework for quality journalism and variety of information by combating media concentrations, which have a negative impact on media pluralism.⁸⁴

Among other initiatives the Resolution urged to develop media literacy and quality journa

communication network, in providing access to a communication network or in hosting information provided by a recipient of the service.⁹⁰

The above provisions of the “Directive on electronic commerce” do not affect the possibility for a court or administrative authority, in accordance with the EU Member States' national legal systems, of requiring the service provider to terminate or prevent an infringement or establishing a system for removal or disabling of access to illegal information (Art. 14). National law may indeed establish obligations for the providers to promptly inform the competent public authorities of alleged illegal activities undertaken or

The national law in the member states of the Council of Europe generally says that d

strengthen “the vital public-watchdog role” of the media and not to adversely affect its ability “to provide accurate and reliable information.”¹⁰¹

At the same time, the ECtHR noted that disinformation *per se* does not fall outside protected freedoms:

Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would... place an unreasonable restriction on the freedom of expression...¹⁰²

Despite the dominance of defamation and privacy case law, there are several judgments of the European Court of Human Rights that relate to the

expression was violated by the national authorities that had seized and

on by Georgia's privately owned *Imedi* television channel, which said that President Saakashvili had been assassinated and that Russian troops were advancing toward Tbilisi.¹¹¹ The point of the RFOM's statement was to underline that this particular issue is about irresponsible journalism and the impact it may have on media freedom and security:

Broadcasters and other media outlets ought to behave responsibly and not mislead the public by spreading false information. This is of particular importance in Georgia and other countries whose societies may be more prone to alarm due to recent armed conflicts.¹¹²

This incident, said the OSCE Representative on Freedom of the Media, showed that self-regulation principles and mechanisms, which are an essential tenet of freedom of speech, need to be expeditiously enhanced and strengthened.¹¹³

In 2017 the topic for the 19th annual joint declaration by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the 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 ExCHPCH

harm individual reputations and privacy, or incite to violence, discrimination or hostility against identifiable groups in society.¹¹⁶

They also highlighted the importance of unencumbered access to a wide variety of both sources of information and ideas, and opportunities to disseminate them, and of a diverse media in a democratic society, including in terms of facilitating public debates and open confrontation of ideas in society, and acting as a watchdog of government and the powerful.

public interest, such as the economy, public health, security and the environment.¹²²

A positive obligation to promote a free, independent and diverse communications environment, including media diversity, was put forward by the Joint Declaration as a key means of addressing disinformation and propaganda. That would include such measures as providing support for the production of diverse, quality media content; prohibiting undue concentration of media ownership; and rules requiring media outlets to be transparent about their ownership structures.¹²³

In this context the Governments were called to establish clear regulatory frameworks for broadcasters to be overseen by a body which is protected against political and commercial interference or pressure and tasked to promote a free, independent and diverse broadcasting sector. They were also urged to ensure the presence of strong, independent and adequately resourced public service media, which operate under a clear mandate to serve t (pe) 9.2(n4(s) 19.) -2.3 (e9 0 0.e)

blow to the freedom of internet and online world, as well as an attempt to introduce censorship.

Historically the democracies have committed to respond to deliberate cross-border disinformation that is dangerous to peace and international co-operation through more openness of the governments, wider access of the

an important step to set up alert mechanisms against those who regularly post insulting or inflammatory text (“trolls”), with a view to excluding them from their forums.

There is a stronger focus on media and online literacy projects. Expansion of fact-checking platforms in the reporting process, to enable them with a possibility to provide the audience with an access to the professional media criticism facilitates, more generally, such literacy. It might be important that media literacy programmes include a *media freedom literacy* component, while internet literacy programmes should include an *online freedom* component. While public authorities and politicians might be media-savvy, they often lack a firm understanding of, and respect for, the role that the independent and pluralistic media and internet freedom play in an open and democratic society.

New initiatives are also put forward to support quality professional journalistic education and training in order to produce eminent journalistic analyses and high editorial standards, which would also promote the international values of freedom of expression and media plurality. A practical way to strengthen quality journalism could be the establishment of national and, perhaps, international syndicates of quality media outlets with high professional standards and effective self-regulation. They could serve as an economic model to support quality media operating within different markets and with no competition between them.

Efforts are made, at least in Europe, to strengthen the role of independent and sustainable public service media (PSM) online. The aim is to make them the backbone of traditional journalism with its professional standards, in particular through an exercise of the due editorial diligence with regard to user-generated or third-party content published on their internet portals. In front of the tide of “fake news” the public service media are encouraged to be the barrier for lies and manipulation. The role of the PSM involves their obligation not to shy away from covering the whole range of issues of public interest, including false news and relevant problems if those come into the focus of the public’s attention. Strengthening the PSM’s fact-

