

Ines Gillich

In the shadow of armed conflict usually another, subliminal, conflict takes place. Instead of being fought with arms, this conflict takes on words and pictures. Control over media coverage and the flow of information have always been employed by warring parties to achieve different goals: To keep their citizens' spirit high, to vilify the enemy, to demoralize enemy morale, and to influence public opinion. With the emerge of professional armies in the 19th century, new

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

the First Karabakh War, media coverage of the conflict was mediated by a small number of Armenian and Azerbaijani journalists who maintained contacts and networks with each other, the situation in the Second Karabakh war has dramatically changed. Traditional media outlets had played during the first Karabakh war in the 1990s a significantly greater role in mediating news about the conflict. In the Second Karabakh War, starting 2020, official authorities were spreading disinformation and bypassed traditie

“questioning the effectiveness” of state actions concerning the conflict, leading to the forced takedown of hundreds of articles and fines issued to news outlets. Authorities also blocked websites with Azerbaijani and Turkish domain names and the social media app TikTok. The martial law currently in force in Armenia allows authorities i.a. to confiscate media outlets’ equipment and to establish special procedures for journalists’ accreditation.

Azerbaijan's parliament followed with its own introduction of martial law. Internet restrictions

Public International Law is the body of law that governs the relations between sovereign states by establishing certain rights and obligations of states vis-a-vis other states. Public International Law has distinct features, that distinguishes it from domestic law. In particular, there is no hierarchical lawmaker. States create public international law by concluding treaties and by creating customary law. Private individuals or private media institutions (not owned or controlled by the government), such as independent legacy media and *Social Media* platforms or their users are - as a general rule - not bound by Public International Law; they must only respect the national law of the state on which territory they act or of which they are

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

Second, Article 11 ARSIWA provides basis for attribution of conduct if it is acknowledged and accepted by a state subsequently as its own. However, the requirements are strict, too. The mere approval and endorsement, as well as congratulations, would be insufficient. These requirements have been specified by the International Court of Justice's Judgement in the Teheran Hostages Case. The case was brought before the ICJ by the United States following the occupation of its Embassy in Tehran by a group of Iranian militant students in 1979, and the capture and holding as hostages of its diplomatic and consular staff. The Court, in its Judgment of 24 May 1980, found that Iran had violated obligations owed by it to the United States under conventions in force between the two countries and rules of general international law, and that the violation of these obligations engaged the international responsibility of Iran. The ICJ pointed out that while the conduct of militants could not be directly attributed to the Iranian State — for lack of sufficient inf

failing a duty to prevent harmful acts by private individuals. Here we may look again into jurisprudence of the ICJ and customary international law. According to the formulation by the ICJ in the Corfu Channel case, every State is under an “obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”. This no-harm principle has been further developed in international environmental law, according to which states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. It is a duty to regulate by national law. In the cyber context, the UN General Assembly urged States “ensure that their laws and practice eliminate safe havens for those who criminally misuse information technologies”.

While some international organs and organizations have proposed some clarifications, there is no uniform understanding on the term. This

As will be shown below, international law limits state speech. Such general rules are derived from the customary law principle of non-intervention, which restricts subversive speech, which aims at destabilizing State institutions by influencing nationals of another State towards insurrection, revolt, or civil strife. However, as the non-intervention principle only sets vague standards

ambivalent. Mere criticism of the internal politics of another state, be it biased or not, does not amount to an illegal intervention into the internal affairs. It has been suggested that disinformation and false news planted covertly by a state, without revealing the official and original source, would indicate a violation of the principle of non-interference. However, the line between permissible political pressure to impermissible coercion is blurry as neither state practice nor doctrine has yet developed convincing criteria that allow to make a proper assessment. Rather a cautious stance should be taken: The threshold of illegal intervention should not be set too low if this prohibition is to be taken seriously at all.



company, or in the rules applicable to other private concerns, and to take the necessary measures to ensure the application of these clauses".

While the Broadcasting Convention is still in force today and there has since been no comparable attempt for regulating other modern forms of communication by multilateral treaty, its practical effects are limited. Many western states, such as the Netherlands, France, Australia, and the United Kingdom, denounced the Convention during the Cold War. As the self-declared legal continuator to the Union of Soviet Socialist Republics (USSR), the Russian Federation is a party to the Broadcasting Convention, while, e.g. Armenia and Azerbaijan, both successor states of the former Soviet Union, have not notified the depository of their intention to be bound, and therefore are not parties to the Convention.

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

There is good reason to hold that Russia's disinformation campaign and war propaganda relating to the war in Ukraine violate the Broadcasting Convention, since they 'harm good international understanding' between states parties. Although Ukraine is not a party to the Convention, several states that have condemned Russia's military actions in Ukraine are parties

³⁹ . . . , *The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia, and Czechoslovakia: Do They Continue in Force*, 23 . . . ' . & ' 1 (1 4).

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thereto, such as Norway, Finland, Estonia, Denmark, Luxembourg, Latvia, and Bulgaria, and therefore could be regarded as harmed by Russian disinformation. But they can not bring a claim before the ICJ. Even though Article 7 of the Convention includes a compromissory clause granting the Permanent Court of International Justice (PCIJ), and now the ICJ (see Article 37 of the ICJ Statute) jurisdiction over disputes concerning the interpretation or application of the Convention, the USSR had entered a reservation to the jurisdiction clause.

The controversies over the Broadcasting Convention displays that the transmission of ideas and information across borders is an area where the interests of western states and eastern states clashed during the Cold War and still continue to clash. From our Western perspective, we are easily inclined to believe that the free flow of information and the exchange of opinions is a necessary corollary to democracy and the universality of human right. But the conception of a free flow of information has put eastern states, pursuing a marxist-leninist policy with a tend

decency, provided that they immediately notify the office of origin of the stoppage of any such telegram or any part thereof, except when such notification may appear dangerous to the security of the State." According to Article 35 "Each Member State reserves the right to suspend the international telecommunication service, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that it

discrimination solely on the ground of race, colour, sex, language, religion or social origin' (Article 4 (1) ICCPR) and "provided that such measures are not inconsistent with its other obligations under international law" (Article 15 (1) ECHR).

Cold War superpowers. However, upon ratifying the ICCPR, 15 states, declared reservations to Article 20 ICCPR. The common thread to these reservations is that the provision is unnecessary given pre-existing legislation on public order offences and that it constitute an undue restraint on freedom of expression. These reservations impede the effective implementation of the prohibition of war propaganda.

The effectiveness of this provision is also diminished, because the drafting history of

without engaging with the State's argument that the restriction was mandated by Article 20.

With Russia's war of aggression against Ukraine, which is accompanied by an aggressive propaganda and misinformation campaign, aggressive rhetoric against Ukraine and western states supporting Ukraine in its self-defense, this provision may become relevant again.

An extreme form of hate speech is incitement to genocide. One of the many effects words can have is not only to cause psychological harm, but they can also directly or indirectly incite to physical violence. Empirical studies suggest that propaganda before and during armed conflicts

Incitement to genocide

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allowed this method of warfare to be effectively developed and applied broadly. Today, it is mainly the Internet that is used to spread false information via social media.

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

The line to perfidy would be crossed if the other party was misled into believing that it was protected by international law (e.g., humanitarian agreement to cease fighting with the intention of surprising the enemy who relied on it). Beyond that, there are no criteria which help to distinguish ruses of war and illegal perfidious acts in armed

insults and public curiosity.” Moreover, Article 14 of GC III provides that prisoners of war are "entitled in all circumstances to respect for their person and honor."

The suggestion to introduce a special sign to identify news media workers (a 'P' or 'Press') has been controversially discussed. Journalist organizations have expressed their fear that such a sign may attract enemy fire rather than protect them.

Article 79 Protocol Additional to the Geneva Conventions of 1977 extends protection to the broader group of all "journalists engaged in dangerous professional missions in areas of armed conflict". This provision covers all persons associated with media work who are on professional assignment in an operational zone, in particular journalists/reporters, cameramen, photographers, and technical support personnel. Such media workers should also be given an identity card attesting to their assignment as proof for the formal identification as a journalist. Under the general rule of international humanitarian law civilians lose protection if they directly take part in hostilities. This includes e.g. violently opposing arrest, taking up arms other than for self-defense, or resorting to violence in any other way. With respect to journalists in conflict zones the question is under which circumstances journalists would lose their protection: Of course, interviewing people, taking notes, or filming with a TV camera are no hostile acts. But Could journalists' reports published in media in support of one party to a conflict be qualified as an act of violence and thus as 'active participation' in the conflict? Such a question was dealt with by the the International Criminal Tribunal for Rwanda (ICTR) in the Case Nahimana and Others, where the ICTR evaluated the criminal responsibility of the founders of the Radio

by NATO forces in 1999, which NATO justified by the argument that the radio installations were also used for military purposes as a propaganda tool. Media facilities and objects may be dual use objects, serving both civilian and military purposes. The law is not clear regarding such dual-use objects, like roads, bridges, railroad tracks, or radio stations, that can serve both civilian and military purposes. There is no uniform state practice as to when such dual-use objects can be lawfully targeted as military objects. The ICRC and the Institute du droit international propose a narrow definition. Many states, such as the U.S. take a broader view, considering all objects that provide the enemy with the ability to sustain war are military objects.

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

It has been shown that Public International Law only provides for fragmented rules limiting offensive state speech, propaganda and other measures of information warfare. The general obligation is to refrain from intervening into the domestic affairs of another state. This general obligation is further specified for diplomatic relations, the protection of dignity of the state, broadcasting, human rights and international humanitarian law. The problem is that there are no effective enforcement mechanism under international law and not all treaties provide for jurisdiction of international courts to solve disputes.