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DECLARATION OF ACADEMIC INTEGRITY

Я Волкова Лідія Євгеніївна, студентка 2 року навчання магістерської програми за спеціальністю «Право» факультету правничих наук НаУКМА підтверджую таке:

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INTRODUCTION

Information has been weaponised in international relations for aeons. States have been using propaganda and disinformation to fuel their rivalry with other nations, discredit other states, and even reason their external and internal policies. Even though there are numerous proofs that speech can lead to harmful consequences, there is little to no international regulation to properly restrict its flow against other subjects of international law. Hatred and discrimination against minorities, violence, armed conflicts, and genocide – in most cases, all of them can be traced back to the dissemination of unlawful speech which has not been appropriately regulated.

The progress of technologies, proliferation and affordability of the Internet, and advancement in the social media sphere subsequently opened broadly available bridgehead for individuals not only to exercise their right to freedom of expression yet also provided a space for its abuse. With progress in public international and human rights law, people and nations have been receiving more and more protection for their speech online and offline. At the same time, the international community as a whole and developed democracies usually overlook the massive perils this space has created.

Indeed, general principles of law provide possibilities for general protection and regulation on the matter. Nonetheless, cases of racial and ethnic hatred resulting in genocide, war crimes towards the civilian population, and the general inability of the world to respond to emerging threats have shown the grey zones in the existing framework. While these scenarios could be rhetoric and ghost-writing decades ago, nowadays, they indicate a clear imperative to create new rules of international law on an urgent basis.

Russian armed aggression against Ukraine and numerous international crimes toward its population is sadly not an exception to the matter. The hostile rhetoric of the Russian Federation towards Ukraine as a nation has been overlooked for a long time, leading to devastating consequences.

This work raises a few controversial issues that have not received proper attention among publicists and practitioners, despite their importance. In turn, it presumes the following research tasks:

- 1) To review the contemporary legal system governing propaganda and disinformation by
 - a. Addressing their existing definitions and legal framework;
 - b. Analysing them from the viewpoint of general prohibitions under public international law;
 - c. Studying the legality of the use of information during armed conflict under the rules of IHL;
 - d. Outlining the possibilities for the existence of individual criminal responsibility under international criminal law;
 - e. Exploring the concept of ‘abuse of rights’ when it comes to ‘speech violations’ under human rights law;
 - f. Revising of the weaknesses in the obtainable for combating disinformation and propaganda.
- 2) To conduct a case study of these academic achievements on the example of information operations directed by the Russian Federation against Ukraine.

The methodological basis in the analysis of this topic was based on *general scientific* and *special legal methods* of scientific research.

The methodological base is the *axiological method*, through which the legal boundaries for propaganda and disinformation were analysed, considering the right to freedom of expression.

During the research, the *comparative-historical method* was used to evaluate the development of these concepts. The *systematic method* was used to build a system of interactions of different rules for regulating propaganda and disinformation.

Using the *analytical method*, the tendencies for legal regulation were determined, while the *synthesis method* combined these inclinations to develop an integrated legal framework.

The *formal legal method* was used to analyse international instruments governing the research questions and to examine sources of international law on the matter.

Finally, the methods of *induction* and *deduction* were used to establish logical connections between the norms found in these rules.

In this regard,

The research question of this thesis is: what are the legal possibilities for responding to and preventing the Russian Federation's use of information campaigns and propaganda in and against Ukraine?

The *object* of the analysis lies in the exercise of states' and individuals' right to freedom of expression and their global boundaries. The *subject matter* of this thesis covers the information created, disseminated, or used by and/or against a State. For example, this involves states' internal and external digital attacks and their effects, which will be analysed under public international law, international humanitarian law, international criminal law, and international human rights law.

Thus, the *primary purpose* of the thesis is to indicate the gaps in this regulation and propose the steps for addressing these issues for their subsequent use and implementation in the case of Ukraine.

CHAPTER 1

OVERVIEW OF CONTEMPORARY LEGAL SYSTEM GOVERNING PROPAGANDA AND DISINFORMATION

“A lie can travel halfway around the world while the truth is putting on its shoes.”

— Mark Twain¹

1. Propaganda, information operations: definitions and legal framework

Day by day, information is used to change one’s judgement, influence people’s decisions, intrude into countries’ internal affairs or merely manipulate public opinion. Distorted information is capable of influencing countries, international organisations or even the whole world, yet clearly, not all of them are regulated, let alone prohibited under international law. Propaganda, disinformation, misinformation, ‘fake news’, and information operations are usually confusing for the general public, given they are frequently used interchangeably. In any case, each legal framework needs definitions; subsequently, this section provides definitions of legal and non-legal terms covered by this thesis.

The primary object of digital attacks is **information** which is defined as data (facts or details) that, given its structure, is capable of conveying meaning.² Here, in most cases, but especially when it comes to the digital use of information, the term ‘**content**’ is used, meaning the materials contained or transmitted via media.³

With regard to the numerous ways of use of information that will be covered below, the term ‘**information space**’ should also be defined. Considering it does not have physical or distinctive boundaries or unilateral understanding, it can be approached differently. Even though the *Cambridge Dictionary* defines it as a place “where

¹ ‘Mark Twain’ (*GoodReads*) <<https://www.goodreads.com/quotes/76-a-lie-can-travel-half-way-around-the-world-while>> accessed 15 June 2022

² Robin Geiß and Henning Lahmann, *Protecting the Global Information Space in Times of Armed Conflict* (The Geneva Academy of International Humanitarian Law and Human Rights 2021), p 6

³ Oxford University Press, ‘Definition of content 1 noun from the Oxford Advanced Learner’s Dictionary’ (*Oxford Learner’s Dictionaries*) <<https://www.oxfordlearnersdictionaries.com/definition/english/content1?q=content>> accessed 15 June 2022

information is available”⁴ when it comes to legal regulation, it usually implies the ‘geographical’ meaning, so to say, considering this term is closely connected to questions of states’ sovereignty or national integrity. Thus, for the purposes of this thesis, by ‘information space’, ‘national’, ‘international’ and ‘global’⁵ framework for the information use is concerned.

Moving to the analysis of the actual content of speech, a few more terms should be explained. Starting from the connection of the spread of the speech and the intent of the speaker, such words as ‘misinformation’, ‘disinformation’, and ‘mal-information’ have to be defined. The most popular among these three, the term **disinformation**, implies the spread of false or inaccurate data in all forms with “ill-intent”, namely to cause public harm or get profit from it.⁶ In contrast, the harm is intentionally created not necessarily from the falseness of the speech as such yet because of its context, use and purpose.⁷ Thus, according to Robin Geiß and Henning Lahmann, what exudes **misinformation** as a concept, is that it also requires the speaker’s intent to cause harm, yet do it so with the spread of factually correct piece of information or the information they “*believe ... to be true or have not taken the time to verify it*”.⁸ This theory is partially backed up by Caroline Jack, who believes that the inaccuracy of data for the spread of misinformation is unintentional (that is common or the reports during the situations of crisis), yet the intent to harm is not required.⁹ However, Hitoshi Nasu believes that misinformation covers “*any false or misleading information*” disseminated without the specific purpose of harming people.¹⁰

⁴ Cambridge University Press, ‘Meaning of information space in English’ (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/information-space>> accessed 15 June 2022; *Supra* note 2

⁵ *Supra* note 2, p 6

⁶ European commission, ‘A multi-dimensional approach to disinformation: Report of the independent High level Group on fake news and online disinformation’ [2018] Communications Networks, Content Networks, Content and Technology and Technology, p 3 cited in Robin Geiß and Henning Lahmann, *Protecting the Global Information Space in Times of Armed Conflict* (The Geneva Academy of International Humanitarian Law and Human Rights 2021), p 7; Jen Weedon, William Nuland and Alex Stamos, *Information Operations and Facebook* (1st edn, Facebook 2017) 5

⁷ *Supra* note 2, p 7

⁸ Cyber law toolkit, ‘Glossary’ (*International cyber law: interactive toolkit*, 16 November 2020) <<https://cyberlaw.ccdcoe.org/wiki/Glossary>> accessed 15 June 2022 cited in Robin Geiß and Henning Lahmann, *Protecting the Global Information Space in Times of Armed Conflict* (The Geneva Academy of International Humanitarian Law and Human Rights 2021), p 7

⁹ Caroline Jack, ‘Lexicon of Lies: Terms for Problematic Information’ [2017] *Data & Society* 2

¹⁰ Hitoshi Nasu, ‘The ‘Infodemic’: Is International Law Ready to Combat Fake News in the Age of Information Disorder?’ [2022] 39 *Australian Year Book of International Law* 65-77, p 66

A concept that nowadays might be falsely overused is ‘**fake news**’, given its *political*¹¹ and *generally misleading*¹² nature. This term, however, denotes the news pieces that imply to contain factual information yet are intentionally filled with an intentional misinterpretation of facts.¹³ Moreover, Björnstjern Baade encourages differentiating the fake news in a strict and a wider sense, as the first type implies the ‘*intentionally fabricated*’ piece of information irrespective of the speaker’s intent to make it false.¹⁴ Nevertheless, a more comprehensive understanding of the concept of fake news is also called ‘**distorted news**’, which entails the misuse of accurate information, which leads the recipients to false conclusions.¹⁵

As for **propaganda**, it implies an intentional attempt to persuade a person or a group of persons, usually by manipulation or deception.¹⁶ There is no requirement on whether this type of content should be accompanied by disinformation, as propaganda can achieve its objectives even with the factually correct information if it is designed with an intention to manipulate the audience with created ‘alternative narrative’.¹⁷

Finally, the term ‘**information operations**’, initially being a military term,¹⁸ is reasonably related to propaganda, as it indicates organised, usually by a government, actions in the information filed committed in order ‘*to achieve a strategic and/or geopolitical outcome*’,¹⁹ for instance ‘*to disrupt the enemy’s informational capacities*’.²⁰ Thus, it essentially combines disinformation, dissemination of fake news, and/or propaganda and other manipulative actions.²¹ Here an interesting concept is the one proposed by Predrag Dojčinović in his work “Propaganda and International Criminal Law From Cognition to Criminality”, namely ‘**conditioning speech**’. This

¹¹ *Supra* note 8, p 65

¹² *Supra* note 2

¹³ Jen Weedon, William Nuland and Alex Stamos, *Information Operations and Facebook* (1st edn, Facebook 2017) 5

¹⁴ Björnstjern Baade, ‘Fake News and International Law’ [2018] 29(4) *European Journal of International Law* <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022

¹⁵ *Ibid.* referring to James Rogers and Andriy Tyushka, ‘‘Hacking’ into the West: Russia’s ‘anti-hegemonic’ drive and the strategic narrative offensive’ [2017] 2(35) *Defence Strategic Communications*

¹⁶ *Supra* note 2, p 7

¹⁷ *Ibid.*

¹⁸ Caroline Jack, ‘Lexicon of Lies: Terms for Problematic Information’ [2017] *Data & Society* 6

¹⁹ Council of Europe, ‘Information Disorder : Toward an interdisciplinary framework for research and policy making’, 2017, Report CoE, p. 16

²⁰ Caroline Jack, ‘Lexicon of Lies: Terms for Problematic Information’ [2017] *Data & Society* 6

²¹ *Supra* note 19

conception denotes the existence of information campaigns explicitly designed to “create the conditions in which human rights violations are easier to justify”.²²

2. How does public international law respond to disinformation and propaganda?

Information and speech, in general, have been used in international relations since the dawn of time. It was the diplomacy that united the nations and helped them to make allies, internal and external propaganda that set societies against their enemies or the manipulation of information that helped the governments to keep them in power. With the development of technologies and the Internet, information has become not only a tool but a powerful weapon in the international arena, as not only does it reach its effect, but it is also generally less expensive and dangerous as it does not require an actual presence of the representatives of a state at a foreign land to reach the State’s goals.

Generally, states are not prohibited from the use of information in the international arena.²³ As to the sources of international law, international conventions and customary international law are silent on the matter, except for a few direct limitations. It is interesting that the international community has not come to an agreement to create an explicit ban for more types of content on an interstate level when, for instance, studies show that Adolf Hitler would never reach such far-reaching support in Germany if it were not for his internal propaganda that what was causing Germans’ misfortunes were “*the evil fruits of the rotten Weimar system*”.²⁴

The latter will be analysed further, yet we can already deduce that even at first glance, propaganda and information operations, especially state-sponsored, are capable of creating significant crises and threatening international peace and security.²⁵

²² Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 145

²³ Hitoshi Nasu, ‘The ‘Infodemic’: Is International Law Ready to Combat Fake News in the Age of Information Disorder?’ [2022] 39 *Australian Year Book of International Law* 65-77, p 67

²⁴ Piers Brendon, ‘Death of truth: when propaganda and ‘alternative facts’ first gripped the world’ (The Guardian, 11 March 2017) <<https://www.theguardian.com/media/2017/mar/11/death-truth-propaganda-alternative-facts-gripped-world>> accessed 15 June 2022

²⁵ Björnstjern Baade, ‘Fake News and International Law’ [2018] 29(4) *European Journal of International Law* <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022

In comparison to misinformation, disinformation, or information operations, propaganda is the most regulated type of content, given that states have come to an agreement not to use hostile propaganda against each other as a custom.²⁶

As to the conventional prohibition of propaganda, states were not that successful on the matter. One of the very few treaties containing this prohibition is the International Covenant on Civil and Political Rights that in Article 20(1) prohibits merely propaganda of war.²⁷ Practically, however, this prohibition implies merely states' obligation to adopt the national legislation prohibiting the respective actions.²⁸ This legal norm, although being very important, does not resolve practical issues existing herein.

In her study 'A Historical Survey of the International Regulation of Propaganda' Elizabeth A. Downey supposes that the prohibition of propaganda might be implied in Article 39 of the Charter of the United Nations,²⁹ which gives the UN Security Council the power to '*determine the existence of any threat to the peace*'.³⁰ However, the practical application of this theory does not seem plausible, as, under its powers, the Security Council will establish the existence of an event or a situation that threatens the world peace. These events are usually the *result* of propaganda, as there is no possibility to detect propaganda before it has reached its goals, actually making the endgame of propaganda illegal, not the speech itself.

The more explicit regulation of propaganda, in particular, can be found in the International Convention Concerning the Use of Broadcasting in the Cause of Peace, which, among other things, prohibits the broadcasting of the information '*of such a character as to incite the population of any territory or act incompatible with the internal order or the security of a territory*' of another state.³¹ Moreover, Article 3 of

²⁶ Elizabeth A. Downey, 'A Historical Survey of the International Regulation of Propaganda' [1984] 5(1) Michigan Journal of International Law 341-360, p 341

²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 20

²⁸ General comment no 11, Article 20, Prohibition of propaganda for war and inciting national, racial or religious hatred, 29 July 1983, CCPR/C/GC/11, para 1

²⁹ Elizabeth A. Downey, 'A Historical Survey of the International Regulation of Propaganda' [1984] 5(1) Michigan Journal of International Law 341-360, p 345

³⁰ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Article 39

³¹ UN General Assembly, International Convention concerning the Use of Broadcasting in the Cause of Peace (Geneva, 1936), 17 December 1954, A/RES/841, Article 1

the Convention also prohibits the spread of deliberately false data when it is *'likely to harm good international understanding'*.³² The problem with this and most regulative acts on the matter lies in the fact that not so many states recognised the threat of propaganda and spread of false information or did not actually see their consequences, or merely did not want to change their behaviour on the international arena, because a lot of them have a very small amount of state parties, making the norms enshrined in them ineffective.

An explicit prohibition of propaganda and disinformation might not be that necessary if one can prove their spread and / or consequences violated customary international law or general principles of law. For example, as will be shown below, it might (i) violate the principle of non-intervention, (ii) breach the state's sovereignty, or (iii) violate the prohibition on the use of force.

Non-intervention

The principle of non-intervention being a part of customary international law and one of the principles of the Charter of the United Nations requires states to abstain from intruding in the essentially domestic matters of other states, internal or external.³³ The International Court of Justice in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* said that the principle of non-intervention is breached when a state or a group of states interferes "*on matters in which each State is permitted, by the principle of State sovereignty, to decide freely*", such as external, economic, political, social, or cultural affairs.³⁴ What makes intervention wrongful and illegal is the coercion towards these choices, which, according to the International Court of Justice, can be viewed, for example, in the use of force, military actions of another state, or the support of terrorist armed activities at the territory of another state.³⁵ However, the scope of the actions constituting intervention, is not

³² UN General Assembly, International Convention concerning the Use of Broadcasting in the Cause of Peace (Geneva, 1936), 17 December 1954, A/RES/841, Article 3

³³ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Article 2; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (1986) ICJ Rep 14, para 205

³⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (1986) ICJ Rep 14, para 205

³⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (1986) ICJ Rep 14, para 205

exhaustive, as any act *'of a certain magnitude'* capable of forcing a policy change in a foreign state will breach the principle of non-intervention.³⁶

Given quite a high threshold for a breach of the principle of non-intervention, a fundamental question is whether dissemination of false information or propaganda can violate this maxim without involving actual consequences for the conduct, or instead – is it possible for a state to spread potentially unlawful speech and remain unpunished?

Generally, the mere spread of disinformation, propaganda, or conditioning speech as a fact does not amount to a violation of this principle, given that the fact of the State's coercion shall take place. The problem here lies in the fact that the use of information can be very non-forcible or even unobtrusive, raising concerns about whether it can breach the non-intervention principle. Thus, the causal link between the disruption of essential governmental functions or intrusion into state's affairs and the spread of potentially illegal content should be established to prove the violation. In other words: disinformation or propaganda should be the ground on which State or its population are being coerced to act in a certain way.

On the other hand, in *'The 'Infodemic': Is International Law Ready to Combat Fake News in the Age of Information Disorder?'* Hitoshi Nasu refers to Henning Lahmann, pointing out that nowadays, western democracies tend to lower the threshold for the assessment of coerciveness as an element of intervention,³⁷ given the complexity of hostile cyber operations, especially done via social media. Thus, the author supposes that the prohibition of foreign intervention is breached when the State has no control over its inherent functions,³⁸ proving that this might be the event of, for example, compelled or manipulated election results because of propaganda, economic disturbances caused by state's disinformation, or as was proposed by Marko Milanovic

³⁶ Maziar Jamnejad and Michael Wood, 'The Principle of Non-intervention' [2009] 22(2) Leiden Journal of International Law, p 348

³⁷ Hitoshi Nasu, 'The 'Infodemic': Is International Law Ready to Combat Fake News in the Age of Information Disorder?' [2022] 39 Australian Year Book of International Law 65-77, p 69 referring to Henning Lahmann, 'Information Operations and the Question of Illegitimate Interference under International Law' [2020] 53(2) Israel Law Review 189-224

³⁸ Hitoshi Nasu, 'The 'Infodemic': Is International Law Ready to Combat Fake News in the Age of Information Disorder?' [2022] 39 Australian Year Book of International Law 65-77, p 69

and Michael N. Schmitt – State’s inability to effectively apply its public health crisis management plan because it became a target for another state’s misinformation.³⁹

To exemplify, it is highly likely that Russian (alleged) interference in the 2016 US Presidential elections and 2016 Brexit referendum in the United Kingdom⁴⁰ could be viewed as a violation of the principle of non-intervention, considering that it was done by through numerous campaigns predeceasing the actual events, involving numerous media outlets, professional journalists and social media platforms, eventually leading to unfavourable results.

Moreover, even the lower threshold of coerciveness requires the state’s substantial deprivation of its capability to manage essential affairs or apply crisis action plans.⁴¹ For this reason, propaganda that results in internal disturbances within the territory of a State that was targeted with such type of content might be viewed as a violation of the non-intervention principle.⁴²

Nevertheless, even if the disinformation that was disseminated against another state was harmful,⁴³ it will violate the maxim only when state is unable to manage the affairs in question or adequately respond to an unfolding threat. An example of this might be Russia’s hacking of Hillary Clinton’s emails and their transfer to WikiLeaks,⁴⁴ accompanied by disinformation campaigns against her⁴⁵ that allegedly resulted in her defeat in the 2016 United States presidential elections, thus intervening with the election processes.⁴⁶

³⁹ Marko Milanovic and Michael N. Schmitt, ‘Cyber Attacks and Cyber (Mis)information Operations During a Pandemic’ [2020] 11(247) *Journal of National Security Law & Policy* 247-284, p 269

⁴⁰ *Supra* note 2, p 2

⁴¹ *Supra* note 38

⁴² Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (2nd edn, Cambridge University Press 2017) 26

⁴³ *Supra* note 38

⁴⁴ *Supra* note 38; Ellen Nakashima, Shane Harris, ‘How the Russians hacked the DNC and passed its emails to WikiLeaks’ (*The Washington Post*, 13 July 2018) <https://www.washingtonpost.com/world/national-security/how-the-russians-hacked-the-dnc-and-passed-its-emails-to-wikileaks/2018/07/13/af19a828-86c3-11e8-8553-a3ce89036c78_story.html> accessed 15 June 2022

⁴⁵ *Supra* note 38

⁴⁶ Sarah Maslin Nir, ‘Hillary Clinton Says Russia Used Hacking ‘to Great Effect’ in Her Defeat’ (*The New York Times*, 6 April 2017) <<https://www.nytimes.com/2017/04/06/nyregion/hillary-clinton-russia-hacking-election-trump.html>> accessed 15 June 2022

Violation of sovereignty

The acts of propaganda, disinformation, or misinformation, even when they do not reach the threshold for the breach of the non-intervention principle, still might be considered unlawful, violating the state's sovereignty as an interference with the country's inherently governmental act.⁴⁷ Sovereignty is also one of the general principles of law,⁴⁸ and it is '*the international independence of a state*'⁴⁹ to rule on its territory without other states' influence or interference.

For these reasons, the spread of information can breach the state's sovereignty on two occasions: when the effects of the speech were caused on the territory of the state in question or when the interference with inherently governmental functions took place even without territorial effects.⁵⁰ The 'territorial effects' in question might be in the form of a damage to a state's property or harm to the territory of a state itself without the latter's consent.⁵¹

In terms of information operations, they might breach the state's sovereignty when they result in a subsequent violation of the population's right to receive truthful information and inaccessibility of truthful data from the state resulting from another state's actions. Moreover, considering '*the concept of sovereignty is linked to the authority of the state to control its territory and exclusively perform certain functions therein*',⁵² there is a breach in case the state hacks TV or radio stations of another country to spread disinformation about important governmental processes, causing disturbances.

⁴⁷ *Supra* note 38, p 270

⁴⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Article 2

⁴⁹ 'What is SOVEREIGNTY' (*The Law Dictionary*) <<https://thelawdictionary.org/sovereignty/>> accessed 15 June 2022

⁵⁰ *Supra* note 38, p 253; Schmitt Michael, Lieutenant Colonel Jeffrey Biller, 'The NotPetya Cyber Operation as a Case Study of International Law' (EJIL:Talk!, 11 July 2017) <<https://www.ejiltalk.org/the-notpetya-cyber-operation-as-a-case-study-of-international-law/>> accessed 15 June 2022; Michael N. Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (2nd edn, Cambridge University Press 2017) 11 [Rule 1], 20 [Rule 4]

⁵¹ *Supra* note 38, 253 referring to Michael N. Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (2nd edn, Cambridge University Press 2017) 16 [Rule 3]; Schmitt Michael, Lieutenant Colonel Jeffrey Biller, 'The NotPetya Cyber Operation as a Case Study of International Law' (EJIL:Talk!, 11 July 2017) <<https://www.ejiltalk.org/the-notpetya-cyber-operation-as-a-case-study-of-international-law/>> accessed 15 June 2022

⁵² *Supra* note 38, p 255

Moreover, given that official communications and statements on behalf of states' political leadership and government are inherently governmental functions,⁵³ interference in this context would violate the state's sovereignty. For example, after the Russian Federation's 2022 invasion of Ukraine, it planned to "defeat Ukraine in four hours", capturing the capital, taking over TV and radio stations to announce Russia's victory and to encourage members of the Ukrainian armed forces to lay down the arms.⁵⁴ The same tactics were used by the USSR in Hungary in 1956, Czechoslovakia (1968) and Afghanistan (1979).⁵⁵

Prohibition of use of force

Another principle that can possibly be violated with respect to states' use of potentially harmful content is the one enshrined in Article 2(4) of the UN Charter, namely the prohibition of the threat or use of force.⁵⁶ Being an essential component of the international law system, this principle prohibits the '*armed intervention and all other forms of interference or attempted threats against the personality of the state*',⁵⁷ covering threat and use of military force,⁵⁸ as well as the coercion of another state followed by deaths of its nationals or other substantial harm.⁵⁹

For example, Milanovic and Schmitt propose that misinformation can reach the required level for the use of force in situations when it convinces the population of a state to certain actions, resulting in their deaths or illnesses, as in situations with the consumption of dangerous substances or drugs.⁶⁰

By the same logic, the spread of safety disinformation on military equipment, specifically targeted about another country, or false information on "green corridors"

⁵³ Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (2nd edn, Cambridge University Press 2017) 22 [Rule 4]

⁵⁴ Tommy Ahonen, 'An epic battle for Kyiv How Ukrainians humiliated Putin and his army' [translated by Dmytro Ivakhnenko] (*Glavkom*, 3 April 2022) <<https://glavcom.ua/kyiv/publications/epichna-bitva-za-kijiv-yak-ukrajinci-prinizili-putina-ta-yogo-armiyu-835265.html>> accessed 15 June 2022

⁵⁵ *Ibid.*

⁵⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Article 2

⁵⁷ United Nations General Assembly, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, Resolution 2131 (1965) UN Doc. A/RES/20/2131, para 1

⁵⁸ Annweshaa Laskar, 'Use of Force under Article 51 of the UN Charter' *TERI School of Advanced Studies* 61-65, p 61

⁵⁹ *Supra* note 38, p 258

⁶⁰ *Supra* note 38

for evacuation resulting in the harm caused to its nationals breaches the same principle.⁶¹

Attribution

The application of all these principles, however, would make the case of a breach of customary international law only when the state's information operation was attributable to the country in question.⁶² To prove the existence of an internationally wrongful act, there should be not only a breach of international obligation but also its attribution to the State in question.⁶³ The conduct is attributable to a state if, for example, it was committed by State organs,⁶⁴ persons or entities empowered to exercise governmental authority,⁶⁵ controlled or directed by the State⁶⁶ or was acknowledged and adopted by it.⁶⁷

The most apparent examples of actors conducting information campaigns or spreading potentially unlawful conduct against another state would be the ones done by its armed forces, intelligence services or state agencies.⁶⁸ In most situations, however, attribution of certain actions to a state remains difficult, if not impossible, given that usually information operations are either done by non-state groups,⁶⁹ or the connections between an actual perpetrator and the state are so intricate that it cannot be proved without state's willingness to admit it.

At the same time, if we take into account Article 11 of Articles on Responsibility of States for Internationally Wrongful Acts, it can hint at a few examples of the links between non-state actors and the state itself. Thus, since Article 11 proposes the model of "acknowledgement and adoption", the state that recognizes and accepts, for example, the content spread via state-owned, state-controlled, or any other "loyal" media which

⁶¹ *Ibid.*

⁶² Hitoshi Nasu, 'The 'Infodemic': Is International Law Ready to Combat Fake News in the Age of Information Disorder?' [2022] 39 Australian Year Book of International Law 65-77, p 69; *Supra* note 38

⁶³ Articles on Responsibility of States for Internationally Wrongful Acts (2001) UN Doc. A/RES/56/83, Arts. 2, 4(1); Michael N. Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (2nd edn, Cambridge University Press 2017) 84

⁶⁴ Articles on Responsibility of States for Internationally Wrongful Acts (2001) UN Doc. A/RES/56/83, Article 4

⁶⁵ *Supra* note 64, Article 5

⁶⁶ *Supra* note 64, Article 8

⁶⁷ *Supra* note 64, Article 11

⁶⁸ *Supra* note 38, p 251

⁶⁹ *Ibid.*

results in the violation of the state's international obligations should be held responsible under the rules of international law.

In conclusion, despite propaganda and disinformation being a popular tool that is usually overused by states, the international community has not developed the rules that are both effective and widespread for the regulation on the matter to be effective. Moreover, even though, on rare occasions, specific actions might reach the threshold for violation of principles of sovereignty, non-intervention, or the prohibition of the threat or use of force, the aspect of the attribution of those acts to the states still makes it very difficult to actually bring states to justice. In any way, there is always hope for other branches of law.

3. International humanitarian law and legal implications of the use of information in times of armed conflict

International law being the law of war, contains the rule of armed conflict, governing the parties' behaviours and proposes the scope of their rights and obligations and focuses mainly on the physical effects of armed conflicts.⁷⁰ Accordingly, it operates in accordance with principles of humanity, distinction, proportionality, and military necessity.⁷¹

In general, it does not substitute other branches of law, so it usually does not manage the aspects of freedom of expression or dissemination of information in general, except for offering protection to journalists and media personnel.⁷² It touches upon some aspects of it, for instance, commanding state parties to abstain from broadcasting of personal data of prisoners of war or civilian internees, including the information that can identify them.⁷³ Moreover, according to the Tallinn Manual, *'psychological*

⁷⁰ Robin Geiss, 'Protecting the Information Space in Times of Armed Conflict' (*JustSecurity*, 3 March 2021) <<https://www.justsecurity.org/75066/protecting-the-information-space-in-times-of-armed-conflict/>> accessed 15 June 2022

⁷¹ 'Fundamental principles of IHL' (*How does law protect in war? ICRC casebook*) <<https://casebook.icrc.org/glossary/fundamental-principles-ihl>> accessed 15 June 2022

⁷² ICRC, 'Rule 34 Journalists' (*IHL Database - Customary IHL*) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule34> accessed 15 June 2022; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Article 79

⁷³ British Red Cross, *Media professionals and armed conflict* (Handbook, 2017) 28; Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, Article 13

operations such as dropping leaflets or making propaganda broadcasts are not prohibited even if civilians are the intended audience’ if it does not violate the rules of international humanitarian law.⁷⁴ Laurent Gisel admits that information operations and propaganda do not necessarily violate the law of armed conflict, as they should not be viewed as military operations falling outside of the scope of IHL regulation.⁷⁵ Nevertheless, Robin Geiß and Henning Lahmann suggest that IHL implicitly prohibits parties’ use of content that specifically targets the civilian population.⁷⁶

Even though IHL tends to be quite adjusting for technological developments, it is rarely analysed in questions of the use of information in wartimes.⁷⁷ This approach, however, needs to be revised as soon as possible, given the wide use of propaganda and disinformation before and during armed conflicts, and their effects on the parties. For example, the employment of fake accounts, bots, and various algorithms in the context of armed conflict, large-scale distortion of another state’s media ecosystem with propaganda, manipulation, and terror of civilian population via media during armed conflicts, incitement to violence and propaganda of war,⁷⁸ the use of deepfake technology in the context of armed conflict⁷⁹ – these scenarios and many more show a tight connection between military and information operations, suggesting there might be an application of IHL norms, at least to some of them. Thus, one could say that information in the scenarios above is used as a weapon and consequently should be regulated by international humanitarian law. Suppose the weaponization of information is the case. In that setting, this approach is also supported by the International Court of Justice, enshrined in the *Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons*, where the ICJ confirmed that the principles of IHL apply to *‘all kinds of weapons, those of the past, those of the present and those of the future’*.⁸⁰

⁷⁴ *Supra* note 70 referring to Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (2nd edn, Cambridge University Press 2017) [Rule 93]; *Supra* note 2, pp. 3, 9

⁷⁵ Laurent Gisel and others, ‘Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts’ [2020] *International Review of the Red Cross* 1-48, p 40

⁷⁶ *Supra* note 2, p 8

⁷⁷ *Supra* note 2, p 2

⁷⁸ *Supra* note 2, p 4

⁷⁹ Eric Jensen, Summer Crockett “‘Deepfakes’ and the law of armed conflict: are they legal?” (*Lieber Institute West Point*, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

⁸⁰ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226, para 86

Some of the rules of international humanitarian law might be potentially relevant to information operations, the spread of disinformation, or propaganda,⁸¹ such as the obligation of humane treatment, the prohibition of perfidy, the prohibition of incitement of IHL violations, as well as the prohibition of the use of terror against the civilian population.

When trying to apply the rules of IHL, analysing propaganda and disinformation, Pontus Winther proposes to pay attention to (i) the content itself, (ii) its mode of dissemination, (iii) the intended audience, and (iv) the consequences of the speech – actual and foreseeable.⁸²

Principle of humanity

The principle of humanity prohibits states from acting a way that inflicts suffering or results in unnecessary injuries or destructions that were not necessary for achieving the legitimate advantage in the conflict.⁸³ It is enshrined in Article 27 of the 4th Geneva Convention,⁸⁴ which requires the parties to the conflict to respect protected persons' honour, dignity, and human rights and overall treat them humanely, in particular, protect them against all acts of violence, threats, insults, as well as a public curiosity.⁸⁵ This demand is especially crucial in 'modern conflicts', where more technologies and the Internet, in general, are used, given the possibility of spread of person's photo and video content without their consent, as well as the unnecessary spread of recorded interrogations and private conversations.⁸⁶

For these reasons, information attacks that result in the leak of civilians', prisoners of war, or any other protected person's personal data or deliberate attacks on their dignity by the adversary in the armed conflict may result in the violation of the principle

⁸¹ *Supra* note 70

⁸² Pontus Winther, 'Military influence operations & IHL: Implications of new technologies' (*Humanitarian Law&Policy*, 27 October 2017) <<https://blogs.icrc.org/law-and-policy/2017/10/27/military-influence-operations-ihl-implications-new-technologies/>> accessed 15 June 2022

⁸³ ICRC, 'What is IHL?' (*ICRC*, 18 June 2018) <<https://www.icrc.org/en/document/what-ihl>> accessed 15 June 2022; ICRC, 'Rule 87 Humane Treatment' (IHL Database - Customary IHL) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule87> accessed 15 June 2022

⁸⁴ *Supra* note, p. 1

⁸⁵ Geneva Convention relating to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 22 August 1864, entered into force 22 July 1865) 75 UNTS 287

⁸⁶ *Supra* note 2, p. 11

of humanity,⁸⁷ even when (or rather especially if) the information is factually correct. Such a situation, however, should be viewed in a broad context, taking into account the consequences of such acts, as well as its purpose and general context of dissemination.

Another example of a violation of the principle of humanity might be the Syrian ‘social media war’, during which Facebook, YouTube, Twitter, Instagram, and WhatsApp were used by the supporters of the pro-government hackers to steal the personal data of Syrian soldiers and to spread disinformation against them.⁸⁸

Digital perfidy

Perfidy is prohibited under both customary and treaty law, covering the ‘*acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection*’ under the rules of IHL with an intention to deceive and betray the other party to the conflict.⁸⁹ Examples of perfidy might be an underhand portraying a person passing for a civilian or non-combatant, faking an intent to surrender or negotiate under a truce flag, as well as the feigning of being wounded or sick.⁹⁰

When it comes to the use of information, perfidy may include the spread of deepfakes portraying mock protected persons or those responsible for negotiations or party’s surrender, as well as intentional broadcasting of disinformation, yet only when it results in physical deaths, injuries, or abduction of members of the adversary party.⁹¹ Additionally, to be considered illegal, such conduct also requires the intent of the perpetrator to achieve some kind of physical consequences proposed above. For

⁸⁷ *Supra* note 2, p 11

⁸⁸ Christiane Rexilius, ‘Syria’s ‘social media war’ (since 2011)’ (Cyber Law Toolkit.) <[https://cyberlaw.ccdcoe.org/wiki/Syria's_'social_media_war'_\(since_2011\)](https://cyberlaw.ccdcoe.org/wiki/Syria's_'social_media_war'_(since_2011))> accessed 15 June 2022 referring to Zeina Karam, ‘Syria’s civil war plays out on social media’ (*AP News*, 19 October 2013) <<https://apnews.com/article/9049ee92b1804bb88cbf6d75d0d61910>> accessed 15 June 2022; Patrick Howell O’Neill, ‘Why the Syrian uprising is the first social media war’ (*Daily dot*, 18 September 2013) <<https://www.dailydot.com/debug/syria-civil-social-media-war-youtube/>> accessed 15 June 2022

⁸⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Article 37

⁹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Article 37

⁹¹ Robin Geiß and Henning Lahmann, Protecting the Global Information Space in Times of Armed Conflict (The Geneva Academy of International Humanitarian Law and Human Rights 2021), p 10 referring to Michael N. Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (2nd edn, Cambridge University Press 2017) [Rule 122], para. 5; Eric Jensen, Summer Crockett “Deepfakes” and the law of armed conflict: are they legal? (Lieber Institute West Point, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

example, the use of deepfake⁹² illustrating the pretend surrender of combatants of one party that resulted in their attack on the armed forces of another party followed by the latter's death, injuries or other harm will be viewed as (digital) perfidy once the causal link between the fake content and the consequences of the attack will be established.

Prohibition of incitement of IHL violations

Common Article 1 of the Geneva Conventions, reflecting customary international law,⁹³ contains states' obligation to "*respect and ensure respect*" for international humanitarian law.⁹⁴ While this obligation is very broad, it implies that states should not only act in conformity with the provisions of the Conventions yet also not to encourage persons under their jurisdiction, other states, or any actor for that matter, to violate or disrespect the norms enshrined in there.

For example, a state that advocates for a non-state group to attack the territory of a third state promotes the idea of torturing the civilian population among its own armed forces or encourages the idea of killing or, for example, deporting the population of an adversary party violates common Article 1.

This principle is often violated when powerful actors, usually controlled by states, do not necessarily spread information capable of convincing others about certain events, yet the data that is controversial enough to make people doubt their understanding of specific events. For example, after the information about the chemical attack in Syria in April of 2018⁹⁵ was rapidly disseminated through different media, the Syrian government, along with Russia, began saying that the incident was staged and that any proof given by the media should be considered fake.⁹⁶

Even despite definite certainty on the matter regarding what happened back then, a certain number of people believed these reports were a part of a massive conspiracy

⁹² Eric Jensen, Summer Crockett "'Deepfakes" and the law of armed conflict: are they legal?' (Lieber Institute West Point, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

⁹³ Wenqi Z., 'On Co-operation by States not Party to the International Criminal Court' (2006) 88 IRRC 87, 93

⁹⁴ Geneva Convention relating to the Protection of Civilian Persons in Time of War, 75 UNTS 287, Article 1; Wenqi Z., 'On Co-operation by States not Party to the International Criminal Court' (2006) 88 IRRC 87, 92

⁹⁵ 'Syria war: What we know about Douma 'chemical attack'' (BBC, 10 July 2018) <<https://www.bbc.com/news/world-middle-east-43697084>> accessed 15 June 2022

⁹⁶ 'Syria war: The online activists pushing conspiracy theories' (BBC, 19 April 2018) <<https://www.bbc.com/news/blogs-trending-43745629>> accessed 15 June 2022

created to put the blame on the governmental forces.⁹⁷ The convincing of even a small group of people was enough for these governments to continue human rights and IHL violations, realizing their impunity as well as the readiness of the armed forces to commit those atrocities and the willingness of the people in the online rear to justify and encourage them to do so.

Prohibition of the use of terror towards the civilian population

Customary international law⁹⁸ and Article 52(1) of Additional Protocol I⁹⁹ prohibit parties to the armed conflict commit acts or threaten to commit them with the purpose of spreading terror among the civilian population. While this prohibition covers mostly physical prohibitions, such as indiscriminate and widespread shelling of civilians¹⁰⁰ or overall acts amounting to crimes against humanity – widespread and / or systematic attacks against the civilian population, Robin Geiß and Henning Lahmann argue that there might be a possibility for information operations to be used as terror against civilians, even though they point out that *'typically most such conduct will not reach this threshold'*.¹⁰¹ Moreover, they emphasize that this IHL violation requires the existence of an actual threat.¹⁰² Thus, like many other violations related to the use of speech, the digital form of use of terror towards civilians also needs actual or possible consequences, as well as the causal link between the expression and the violence that occurred. The actual violence against non-combatants and crimes committed against civilians, on the other hand, would reach this threshold when happening as a result of the expression.

On the other hand, Eric Jensen and Summer Crockett, in their analysis of the legality of the use of deepfakes during armed conflicts, suggest that, for example, a deepfake

⁹⁷ Syria war: The online activists pushing conspiracy theories' (BBC, 19 April 2018) <<https://www.bbc.com/news/blogs-trending-43745629>> accessed 15 June 2022

⁹⁸ ICRC, 'Rule 2. Violence Aimed at Spreading Terror among the Civilian Population' (IHL Database - Customary IHL) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule2> accessed 15 June 2022

⁹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Article 52

¹⁰⁰ ICRC, 'Rule 2. Violence Aimed at Spreading Terror among the Civilian Population' (IHL Database - Customary IHL) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule2> accessed 15 June 2022 referring to United Nations General Assembly, Resolution No 53/164 on the report of the Third Committee (A/53/625/Add.3) UN Doc. A/RES/53/164, p 2

¹⁰¹ *Supra* note 2, p 12

¹⁰² *Ibid.*

portraying a nuclear or biological attack resulting in hysteria suffices the threshold for this violation.¹⁰³ Nevertheless, the reason for such a conclusion might be the peculiarities of deepfakes, considering *'their perceived reliability and believability'*.¹⁰⁴ For example, the TV interview or a series of social media publications legitimately will not reach the necessary threshold for a 'terror of civilian population' since their impact will not be as damaging as a very realistic yet fake video of the military command of one state, claiming their (fake but believable) surrender.

In conclusion, when it comes to the 'media variants' of IHL violations, they should be assessed on a case-by-case basis, taking into account the type of content disseminated, its scale and actual impact on the civilian population, as well as the possibility of consequences portrayed in the expression and availability of nexus between the two.

4. Use of information & individual criminal responsibility under international criminal law

International criminal law is the branch of public international law that covers the perpetrators' responsibility for international crimes – the crimes against humanity, war crimes, genocide, and the crime of aggression. While most of its substantial rules are rooted in customary international law, procedurally, it exists in the statutes of various international courts or tribunals. Some of them are created *ad hoc* to deal with temporal and territorial situations, such as International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, and Special Tribunal for Lebanon, yet since 1998 there has been a permanent International Criminal Court, created to deal with international crimes committed in, to, or by the nationals of states that signed the Rome Statute.

At first glance, the Rome Statute does not contain an explicit prohibition of the use of fake information or propaganda neither in peacetime nor during the war. However, it still can be found in the treaty in sections concerning (1) facilitating the crime

¹⁰³ Eric Jensen, Summer Crockett "Deepfakes" and the law of armed conflict: are they legal?" (*Lieber Institute West Point*, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

¹⁰⁴ *Ibid.*

commission, in particular in terms of aiding and abetting others; (2) incitement to genocide; (3) commanders' responsibility, all of which will be described below.

The responsibility under international criminal law can occur not only for direct perpetrators of crimes under the courts' or tribunals' jurisdiction but also for those who in any way facilitate the crime commission – order or organise it, in any way assist in its commission, or contribute to it in any way.¹⁰⁵ Thus, the spread of propaganda or disinformation can be qualified as prompting an international crime under Article 23(3)(b) of the Rome Statute in the form of inducing,¹⁰⁶ Article 23(3)(c) as 'other assistance' to a said crime,¹⁰⁷ or as 'other contribution' under Article 23(3)(d).¹⁰⁸ The most evident 'speech mode of liability' would be the one covered by Article 23(3)(e), namely incitement to genocide,¹⁰⁹ as it is usually '*committed by way of disseminating hateful disinformation about a targeted group*'.¹¹⁰ Notably, a person can be charged under Article 23(3)(e) of the Rome Statute even if the crime under Article 6 (genocide) was not committed, given that incitement to a particular crime does not require an existence of an actual crime.¹¹¹ Thus, a mere possibility of such consequences suffices this mode of liability.

For these reasons, high state officials, politicians, media personnel and other actors who actively use propaganda and disseminate false information or the content inciting violence or discrimination should be held criminally responsible when these acts amount to an incitement to genocide or any other mode of liability under the Rome Statute.

¹⁰⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25

¹⁰⁶ *Supra* note 2, p. 16 referring to Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(b)

¹⁰⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(c)

¹⁰⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(d)

¹⁰⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(e)

¹¹⁰ *Supra* note 2, p. 16 referring to Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(e)

¹¹¹ *Supra* note 2, p 16

The prohibition of incitement to genocide arises from a *jus cogens* norm of prohibition of genocide.¹¹² Given that social media and other means for the dissemination of information are considered ‘particularly effective’ for online incitement,¹¹³ it should be discussed and analysed more.

In recent years social media has become quite an operative tool for the spread of ethnic and racially motivated violence. For example, in 2020, it was confirmed that Facebook had facilitated Myanmar’s genocide of the Rohingya Muslim community.¹¹⁴ In 2019 Gambia alleged that Myanmar atrocities against Rohingya people amount to the crime of genocide, filing the case to the International Court of Justice.¹¹⁵ Facebook’s part in this was rooted in the platform’s algorithm that intensified the spread of hate speech against the group, so people’s feeds were filled with inflammatory posts.¹¹⁶ Moreover, even the company itself admitted that it had not taken all the necessary steps to prevent the consequences of these actions. In contrast, in its report, it admitted that ‘Facebook has become a means for those seeking to spread hate and cause harm, and posts have been linked to offline violence’.¹¹⁷ Later this was also confirmed by the Human Rights Council’s Report of the independent international fact-finding mission on Myanmar, which acknowledged that ‘Facebook has been a useful instrument for those seeking to spread hate’.¹¹⁸

¹¹² Christiane Rexilius, ‘Scenario 19: Hate speech’ (*Cyber Law Toolkit*, 3 March 2022 (edited)) <https://cyberlaw.ccdcoe.org/wiki/Scenario_19:_Hate_speech> accessed 15 June 2022 referring to International Law Commission, Report on the work of the seventy-first session, Chapter V. Peremptory norms of general international law (*jus cogens*) (YILC 2018) UN A/74/10, p. 146

¹¹³ Christiane Rexilius, ‘Scenario 19: Hate speech’ (*Cyber Law Toolkit*, 3 March 2022 (edited)) <https://cyberlaw.ccdcoe.org/wiki/Scenario_19:_Hate_speech> accessed 15 June 2022 referring to Gregory S Gordon, ‘Formulating a New Atrocity Speech Offense: Incitement to Commit War Crimes’ [2012] 43(2) *Loyola University Chicago Law Journal* 281-316

¹¹⁴ Dan Milmo, ‘Rohingya sue Facebook for £150bn over Myanmar genocide’ (*The Guardian*, 6 December 2021) <<https://www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence>> accessed 15 June 2022

¹¹⁵ ‘Developments in Gambia’s Case Against Myanmar at the International Court of Justice’ (*Human Rights Watch*) <<https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice>> accessed 15 June 2022 referring to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (2019) ICJ Rep

¹¹⁶ Dan Milmo, ‘Rohingya sue Facebook for £150bn over Myanmar genocide’ (*The Guardian*, 6 December 2021) <<https://www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence>> accessed 15 June 2022

¹¹⁷ Dan Milmo, ‘Rohingya sue Facebook for £150bn over Myanmar genocide’ (*The Guardian*, 6 December 2021) <<https://www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence>> accessed 15 June 2022

¹¹⁸ UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, 12 September 2018, A/HRC/39/64, paras 73-74

As for the international jurisprudence on the matter, the connection between incitement to genocide and media tools has been analysed by the International Criminal Tribunal for Rwanda in the case of *Nahimana et al.* According to the facts of the case, the Rwandan media company Radio-Television Libre des Mille Collines (RTLM) was used for Hutu propaganda inciting violence against Tutsis community, resulting in massacres and other crimes committed against them.¹¹⁹ As a result, the defendants were charged with incitement to genocide, conspiracy to commit genocide, complicity in genocide, direct responsibility for genocide, as well as crimes against humanity and war crimes.¹²⁰

In the Appeal Judgment, the Tribunal reminded that a crime of incitement to genocide is committed when a perpetrator directly and publicly calls for a genocide commission with the intent that other people will commit the crime.¹²¹ When differentiating hate speech from incitement, ICTR established that the latter '*has to be more than a mere vague or indirect suggestion*' and shall directly call to action.¹²² Moreover, according to the *Prosecutor v Jean-Paul Akayesu* ICTR Judgment, what makes incitement to genocide a distinctive act is that it is disseminated to '*the members of the general public at large by such means as the mass media, for example, radio or television*'.¹²³ Moreover, in both cases, the Tribunal emphasized the importance of the context of the speech,¹²⁴ as well as cultural and linguistic differences, considering how the alleged inciteful messages are perceived by both the group that is targeted and the one which is allegedly incited.¹²⁵ This can also be illustrated by modern Facebook policies, by virtue of which the company blocks the posts and users who use derogatory

¹¹⁹ 'Nahimana' (International Justice Resource Center, <<https://ijrcenter.org/international-criminal-law/ictr/case-summaries/nahimana/>> accessed 15 June 2022; *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, para 673

¹²⁰ 'Nahimana' (International Justice Resource Center, <<https://ijrcenter.org/international-criminal-law/ictr/case-summaries/nahimana/>> accessed 15 June 2022; *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, paras 673-675

¹²¹ *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, para 677 referencing to the Statute of the International Criminal Tribunal for Rwanda (8 November 1994, as last amended on 13 October 2006), Article2(3)(c)

¹²² *Prosecutor v Jean-Paul Akayesu*, Judgement (2 September 1998) ICTR-96-4-T, para 557

¹²³ *Supra* note 123, para 556

¹²⁴ *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, para 713

¹²⁵ *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, para 700; *Prosecutor v Jean-Paul Akayesu*, Trial Judgment (2 September 1998) ICTR-96-4-T, para 558

terms, for example, Russian-speaking users including the word “khokhol” in their publications,¹²⁶ which is an insulting term used against Ukrainians.

For the reasons listed above, the ICTR Appeal Chamber stressed that the accused were using printed media as well as radio and television for spreading ‘direct and public’ calls for specific acts of genocide.¹²⁷

Another example of ‘speech crimes’ can be found in the case of Vojislav Šešelj, ruled by the ICTY, who used propaganda, promoting his ideology via various platforms, press conferences, publications, and other means,¹²⁸ for which he was charged with war crimes, persecution, deportation, as well as other inhumane acts as crimes against humanity.¹²⁹ When analysing the allegedly unlawful speeches, the Tribunal concluded that most of the propaganda disseminated by the defendant was not illegal and considered it was unable to ‘substantially contribute’ to the perpetration of the crimes he was charged with.¹³⁰ Unlike the incitement to genocide, these alleged crimes require a higher threshold, as here, the link with a specific crime that took place is needed.

Moreover, the case of *Šešelj* has demonstrated another problem with the existing framework of abuse of freedom of speech. Even though the defendant had repeatedly called for violence and unlawful actions against specific groups, the fact that these speeches were held in front of a big audience and not specific individuals did not allow the Tribunal to establish a link between the speech and its consequences.¹³¹ This, along with the ‘*geographic and temporal distance*’¹³² between the inciteful speech and the

¹²⁶ Kingston, ‘Facebook asked the court not to consider the lawsuit of coach Khokhlov because of his last name’ (247 NewsAgency, 7 February 2022) <<https://247newsagency.com/sports/61422.html>> accessed 15 June 2022

¹²⁷ Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 51, referencing to *Prosecutor v Nahimana et al. (Media case)*, Appeal Judgment (28 November 2007) ICTR-99-52-A, para 726

¹²⁸ *Prosecutor v Vojislav Šešelj*, Trial Chamber Judgment (31 March 2016) IT-03-67-T, para 297

¹²⁹ Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 105

¹³⁰ *Prosecutor v Vojislav Šešelj*, Trial Chamber Judgment (31 March 2016) IT-03-67-T, paras 294, 356

¹³¹ Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 108

¹³² Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 109 referring to *Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Public redacted version of Decision on Defence Applications for Judgments of Acquittal (05 April 2016) ICC-01/09-01/11-2027-Red-Corr, para 135

actions themselves, makes it almost impossible to prove the connection between the two.¹³³

As to aiding and abetting, this mode of liability can be found in the actions of social media managers, radio, or TV presenters, as well as any other media professionals who in their workplace encourage, lend moral support or even assist to the actual perpetrators of international crimes.¹³⁴ It can also be applied to politicians or public figures who use hate speech and propaganda, creating an ‘atmosphere of terror’ in their countries or political regions among the population, preparing them to commit or justify the commission of crimes under the jurisdiction of international courts.¹³⁵ Thus, it does not necessarily should be laid in their political programs, as it can be found in politicians’ programs, but also in their actions, public speeches, implied actions, and other activities capable of leading to harmful consequences.

5. ‘Speech violations’ under international human rights law and the ‘abuse of rights’

Applicable legal framework

Under international human rights law, the aspects of dissemination of propaganda and disinformation are covered by the right to freedom of expression and the potential abuse of it. This right being ‘*the cornerstone of every democratic society*’,¹³⁶ is protected under various international instruments, such as the Universal Declaration of Human Rights,¹³⁷ European Convention on Human Rights,¹³⁸ American Convention on

¹³³ Predrag Dojčinović, *Propaganda and International Criminal Law from Cognition to Criminality* (1st edn, Routledge 2020) 108

¹³⁴ British Red Cross, *Media professionals and armed conflict* (Handbook, 2017) 122 referring to Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544, Article 25(3)(c) and *Prosecutor v Tadić*, Appeal Judgment (15 July 1999) IT-94-1-A, para 229

¹³⁵ British Red Cross, *Media professionals and armed conflict* (Handbook, 2017) 122 referring to *Prosecutor v Brđanin*, Trial Chamber Judgment (1 September 2004) IT-99-36-T

¹³⁶ General comment no 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para 2; *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976), para 49; *Benhadj v Algeria* Communication no 1173/2003 UN Doc CCPR/C/90/D/1173/2003 (2007), para 8.10; *Marques de Morais v Angola* Communication no 1128/2002, UN Doc CCPR/C/83/D/1128/2002, para 5.4

¹³⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) art 19

¹³⁸ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 art 10 (1)

Human Rights,¹³⁹ International Covenant on Civil and Political Rights,¹⁴⁰ and African Charter on Human and Peoples' Rights.¹⁴¹ All of them provide individuals under respective jurisdictions with the rights to hold and express opinions without states' interference, protecting not only the speech itself but also the means through which it is disseminated,¹⁴² both online and offline,¹⁴³ given the role and the impact of the Internet as the broadcast media.¹⁴⁴

Generally, the information that touches upon political questions¹⁴⁵ or even broader – issues that are in the public interest,¹⁴⁶ it is considered protected.¹⁴⁷ Interestingly, this protection related not only to the factually correct information, and as was stated by the European Court of Human Rights (ECtHR) in *Salov v Ukraine*, there is no explicit prohibition on discussion and dissemination of untruthful information, as such prohibition will eventually result in the deprivation of public's right to express their views and opinions,¹⁴⁸ especially when they have some factual basis.¹⁴⁹ Moreover, for the sake of public debate European human rights law also permits some degree of immoderation¹⁵⁰ or even exaggeration.¹⁵¹ Thus, even if speech related to political

¹³⁹ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 art 13 (1)

¹⁴⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 19 (2)

¹⁴¹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 art 9

¹⁴² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) art 19; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 art 10 (1); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 art 13 (1); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 19 (2); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 art 9

¹⁴³ United Nations Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet: draft resolution (27 June 2016) A/HRC/32/L.20, para 1

¹⁴⁴ *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR, 22 April 2013), para 119; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 133

¹⁴⁵ *Krone Verlag GmbH & Co KG v Austria* App no 34315/96 (ECtHR, 26 February 2002), para 36

¹⁴⁶ *Tammer v Estonia* App no 41205/98 (ECtHR, 6 February 2001), para 68; *Couderc and Hachette Filipacchi Associés v France* App no 40454/47 (ECtHR, 10 November 2015), para 103

¹⁴⁷ *Długolecki v Poland* App no 23806/03 (ECtHR, 24 February 2009), para 40; *Salov v Ukraine* App no 65518/01 (ECtHR, 6 September 2005), para 104

¹⁴⁸ *Salov v Ukraine* App no 65518/01 (ECtHR, 6 September 2005), para 113

¹⁴⁹ *E.S. v Austria* App no 38450/12 (ECtHR, 25 October 2018), para 48; *Jerusalem v Austria* App no 26958/95 (ECtHR, 27 May 2001), para 43; *Feldek v Slovakia*, App no 29032/95 (ECtHR, 12 July 2001), para 73-76; *Genner v Austria* App no 55495/08 (ECtHR, 12 January 2016), para 38

¹⁵⁰ *Mamère v France* App no 12697/03 (ECtHR, 7 February 2007), para 25; *Steel and Morris v the United Kingdom* App no 68416/01 (ECtHR, 15 May 2005), para 90

¹⁵¹ *Prager and Oberschlick v Austria* App no 15974/90 (ECtHR, 26 April 1995), para 38; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003), para 39

matters might become hostile or controversial,¹⁵² it demands a higher degree of protection.¹⁵³

In *Handyside v the United Kingdom*, ECtHR established that even those expressions that “*offend, shock or disturb the State or any sector of the population*” shall be protected.¹⁵⁴ However, the speaker’s emotional disapproval expressed in a sceptical and sarcastic manner is still legal,¹⁵⁵ as it may serve merely stylistic purposes since the style of an expression is protected along with its substance and ideas.¹⁵⁶ Thus, the speech shall not be restricted if it contains a “*scathing criticism of the current state of affairs*”¹⁵⁷ yet does not advocate discrimination or contains humiliating words or attitudes.¹⁵⁸ Moreover, in a public debate, even exaggeration is allowed.¹⁵⁹ For these reasons, provocative metaphors expressed in an aggressive and hostile tone might be viewed as the speaker’s emotional appeal to the issue.¹⁶⁰

Furthermore, when (surprisingly) addressing the concept of ‘fake news’ in *Brzeziński v Poland*, the ECtHR confirmed that even an intentional spread of factually incorrect data when done ‘at the local level’ was in line with the right to a freedom of expression merely because of its importance to a public debate.¹⁶¹ Finally, according to the case of *Standard Verlags GmbH v Austria (No 2)*, the European Court also protects controversial facts shared about public figures, as they can contribute to a debate of general interest.¹⁶²

On the other hand, international human rights bodies, particularly the Inter-American Court of Human Rights (IACtHR), usually do not consider a truncated

¹⁵² *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), para 231; *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 3 October 2017), para 106

¹⁵³ *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 22 April 2010), para 117; *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 3 October 2017), para 95; UN Human Rights Council, *Freedom of opinion and expression*, 12 October 2009, A/HRC/RES/12/16, para 5; *Mariya Alekhina and Others v Russia* App no 38004/12 (ECtHR, 17 July 2018), para 182

¹⁵⁴ *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976), para 49

¹⁵⁵ *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018), para 71; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary* App no 22947/13 (ECtHR, 2 February 2016), para 77

¹⁵⁶ *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018), para 68

¹⁵⁷ *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018), para 71

¹⁵⁸ *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009), para 77

¹⁵⁹ *Prager and Oberschlick v Austria* App no 15974/90 (ECtHR, 26 April 1995), para 38; *Thoma v Luxembourg* App no 38432/97 (ECtHR, 29 March 2001), para 45-46; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003), para 39

¹⁶⁰ *Supra* note 158

¹⁶¹ *Brzeziński v Poland* App no 47542/07 (ECtHR, 25 July 2019), para 51-55

¹⁶² *Standard Verlags GmbH v Austria (no 2)* App no 21277/05 (ECtHR, 4 June 2009), para 47

version of facts as a lawful content, reasoning it with the fact that the public's right to receive and impart information includes the right to truthful information, as well as the right not to be manipulated by others.¹⁶³

Recalling the difference between disinformation and misinformation, as well as the person's intent when it comes to its spreading, the ECtHR's position on this also crystallised in the distinction between the two. Thus, the European Court differentiates between facts, value judgments, as well as unintentional spread of false information. For example, in a milestone case of *Lingens v Austria* it established that value judgments are protected under the European Convention even if they have no factual basis, as the requirement to be backed up '*infringes freedom of opinion itself*'.¹⁶⁴ This proves that as a general rule, the Court does not will to punish those individuals who spread lies unintentionally or merely disseminate their opinions even if they have no grounds to build them on.

The problem of an existing human rights centred approach lies in the fact that while it cherishes people's right to express themselves and share their thoughts, it is not designed for a proper response. Thus, the United Nations Human Rights Committee suggests that criminal punishment for the publication of false news is a violation of the right to freedom of expression, if their falseness did not lead to harmful consequences or harmed the public in other way.¹⁶⁵

Additionally, the ECtHR reiterated in *Lehideux and Isorni v France* that civil remedies as punishment are more desirable when it comes to cases under Article 10 of the Convention.¹⁶⁶ This is also in line with the IACtHR's approach, according to which the states' interference '*with the effective exercise of the right to freedom of expression*' shall be '*as little as possible*'.¹⁶⁷ For these reasons, European Court suggests states to take a more liberal approach, fearing of a possible 'chilling effect',¹⁶⁸ assuming people

¹⁶³ *Mémoli v Argentina* (IACtHR, 22 August 2013), para 122

¹⁶⁴ *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986), para 46

¹⁶⁵ Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant 'Concluding observations of the Human Rights Committee' CCPR/C/79/Add.116 (November 1999), para 24

¹⁶⁶ *Lehideux and Isorni v France* App no 24662/94 (ECtHR, 23 September 1998), para 57

¹⁶⁷ *Ricardo Canese v Paraguay* (IACtHR, 31 August 2004), para 96

¹⁶⁸ *Pihl v Sweden* App no 74742/14 (ECtHR, 7 February 2017), para 35; Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UNHRC, 17th Session,

would stop expressing their views and opinions knowing they might be criminally punished for this.

Furthermore, sometimes the legal assessment of any content released online can take some time, considering that different factors shall be taken into account. In particular, the assessment shall be based on (1) the role and capacity of the speaker – the one who posts something; (2) the nature of the platform; (3) the audience that was exposed to the content in question; (4) the provider who facilitates the content dissemination.¹⁶⁹

Moreover, certain types of content have legal tests that are used to establish their potential illegality. For example, to establish an existence of hate speech, namely, incitement to hostility, hatred, or violence the criteria from the *Rabat Plan of Action*¹⁷⁰ or similar criteria used by the European Court on Human Rights.¹⁷¹ This not only creates and supports a universal approach to combating hate speech, yet also creates an environment for a proper and complex response to human rights violations. Similar tactic is used by international community when it comes to stopping online disinformation.¹⁷²

Marko Milanovic and Michael N. Schmitt raised a valid concern on what should be considered a threshold for international responsibility for cyber operations, spread of disinformation or other type of illegal content against another state.¹⁷³ Questions of attribution aside, there is little to no practice on jurisdictional issues concerning the use of information, apart from general provisions of human rights treaties. Thus, for online operations to suffice the threshold for extraterritorial jurisdiction they should not only

Agenda item 3, UN Doc A/HRC/17/27 (16 May 2011), para 24; *Mlungwana v the State and the Minister of Police* [2018] ZAWCHC 3, para 85

¹⁶⁹ Alessio Sardo, 'Categories, Balancing, and Fake News: The Jurisprudence of the European Court of Human Rights' [2020] 33(2) Canadian Journal of Law & Jurisprudence <<https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/categories-balancing-and-fake-news-the-jurisprudence-of-the-european-court-of-human-rights/2E59476A844C2245CCD4EA506C06847A>> accessed 15 June 2022 referring to Seth C Lewis and Oscar Westlund, 'Actors, Actants, Audiences, and Activities in Cross-Media News Work' [2014] 3(1) Digital Journalism <<https://doi.org/10.1080/21670811.2014.927986>> accessed 15 June 2022

¹⁷⁰ UNHRC, *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence*, 11 January 2013, UN Doc A/HRC/22/17/Add 4

¹⁷¹ *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), paras 205-207

¹⁷² Alessio Sardo, 'Categories, Balancing, and Fake News: The Jurisprudence of the European Court of Human Rights' [2020] 33(2) Canadian Journal of Law & Jurisprudence <<https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/categories-balancing-and-fake-news-the-jurisprudence-of-the-european-court-of-human-rights/2E59476A844C2245CCD4EA506C06847A>> accessed 15 June 2022 referring to Commission (EC), 'Tackling online disinformation: a European Approach' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2018) 236 final

¹⁷³ *Supra* note 38, p 263

lead to harmful consequences for a population of another state, have causal link to them, yet also be of state's control.¹⁷⁴

Importantly, a causal link between the speech in question and the conduct desired or intended by the speaker is required.¹⁷⁵ To illustrate, in *A.W.P. v Denmark*, the HRC found the lack of connection between the statement “*everyone from another race should be eliminated*” and the effect on the applicant,¹⁷⁶ declaring the claim inadmissible. Similarly, in *Fatima Andersen v Denmark*, the committee found that even when a statement is pursued as a personal insult, it shall not be considered unlawful unless “*the specific consequences of the statements were imminent and would personally affect the [applicant]*”.¹⁷⁷

Abuse of rights

In any case, even an open-minded approach described above and used, *inter alia*, by the Strasburg Court does not mean that people can spread lies or propagate hatred, violence, or discrimination and remain unpunished. First of all, following the Court's practice, it must be reiterated that publication of untruthful information is not protected under ECHR's provisions,¹⁷⁸ while there is also a concept of ‘manifestly unlawful content’ that usually covers propaganda as well as incitement to violence, hatred, or hostility.¹⁷⁹

So, here the question on whether disinformation, propaganda, or any other illegal content be fully excluded from the protection under human rights provisions governing freedom of expression arises. The relevant concept for this discussion is an ‘abuse of rights’ which is prescribed, in particular, under Article 17 of the European Convention on Human Rights. It implies that the rights and obligations enshrined in the Convention

¹⁷⁴ *Supra* note 38, p 268

¹⁷⁵ *Perincek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), paras 207-208; *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006), para 68

¹⁷⁶ *A.W.P. v Denmark*, Communication No. 1879/2009 U.N. Doc. CCPR/C/109/D/1879/2009 (2013), paras 2.1, 6.4

¹⁷⁷ *Fatima Andersen v Denmark*, Communication No. 1868/2009 U.N. Doc. CCPR/C/99/D/1868/2009 (2010), para 6.4

¹⁷⁸ Council of Europe: European Court of Human Rights, *Internet: Case-law of the European Court of Human Rights*, (June 2011 [updated June 2015]), p. 30 referring to *Schuman v Poland* App no 52517/13 (ECtHR, 3 June 2014)

¹⁷⁹ ‘Germany: Flawed Social Media Law NetzDG is Wrong Response to Online Abuse’ (Human Rights Watch, 14 February 2018) <<https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>> accessed 15 June 2022

may not be used for ‘*the destruction of any of the rights and freedoms*’ set out in the Convention, or at their unlawful limitation.¹⁸⁰

Even though the ECtHR is not very consistent when it comes to the use of Article 17 to the cases involving dissemination of illegal speech, it did apply it on several occasions. The first such case was the *Communist Party of Germany v the Federal Republic of Germany* adjudged by the European Commission in 1957.¹⁸¹ The application under Articles 9, 10, and 11 of the Convention was filed by the German Communist Party in response to government’s ban of the party’s activities which they deemed unconstitutional.¹⁸² The Commission, however, refused to consider the case on the merits, reasoning it with the fact that the party supported the seizure of power in Germany, establishment of the dictatorship and abolition of the democratic order, considering this as ‘*activity aimed at destroying the rights or freedoms set forth in the Convention*’.¹⁸³

Similarly, the ECtHR referred to Article 17 in *Glimmerveen and Hagenbeek v. the Netherlands*, where the applicants filled the complaints under Article 10, trying to justify their racist and xenophobic expressions with freedom of expression. Yet, the Court did not allow the applicants to proceed to the merits of the case, reiterating that their discriminatory remarks were aimed at the destruction of the rights under the convention.¹⁸⁴ Article 17 was also used by the Court when applicants tried to justify disseminating pro-Nazi opinions in their political campaigns,¹⁸⁵ despite the fact that in political debates the exchange of opinions is invigorated.

Nevertheless, the ‘abuse clause’ has a very limited application in the court’s jurisprudence, as it is generally applied only to a manifestly illegal content. This,

¹⁸⁰ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 art 17

¹⁸¹ Shattock Ethan, ‘Should the ECtHR Invoke Article 17 for Disinformation Cases?’ (*EJIL:Talk!*, 26 March 2021) <<https://www.ejiltalk.org/should-the-ecthr-invoke-article-17-for-disinformation-cases/>> accessed 15 June 2022

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ Shattock Ethan, ‘Should the ECtHR Invoke Article 17 for Disinformation Cases?’ (*EJIL:Talk!*, 26 March 2021) <<https://www.ejiltalk.org/should-the-ecthr-invoke-article-17-for-disinformation-cases/>> accessed 15 June 2022 referring to *Glimmerveen and Hagenbeek v the Netherlands* App nos 8348/78 8406/78 (ECtHR, 11 October 1979)

¹⁸⁵ Shattock Ethan, ‘Should the ECtHR Invoke Article 17 for Disinformation Cases?’ (*EJIL:Talk!*, 26 March 2021) <<https://www.ejiltalk.org/should-the-ecthr-invoke-article-17-for-disinformation-cases/>> accessed 15 June 2022 referring to *B.H, M.W, H.P and G.K. v. Austria* App no 12774/87 (ECOM, 12 October 1989)

however, is also disputable, as the ECtHR denied applying it, for example, in the case of *Perinçek v Switzerland* concerning the denial of the Armenian genocide, resorting to the analysis of an alleged incitement instead.¹⁸⁶

Thus, it can be deduced that the abuse of rights in cases concerning disinformation or propaganda would be recognised only in cases of manifest and intentional disregard of verifiable information that is clearly outside of the scope of protection under freedom of expression. Yet, this approach is rather utopian, since disinformation usually requires thorough fact-checking and content analysis that is clearly better done following the practice established under Article 10 of the Convention. Accordingly, given that such an approach might result in an excessive censorship and violation of the presumption of innocence, legal community might find other ways to combat disinformation that would be both more effective and consistent with an existing human rights framework.

6. Existing remedies against disinformation and propaganda & their flaws

Any limitation enshrined in the rules of international law would be senseless and void if it was not backed up by remedies and counteractions that could be used to react to or prevent unlawful behaviours. When it comes to the response to disinformation and propaganda, there is a wide range of both general rules of international law, as well as specifically designed for this kind of violations.

As a reaction to dissemination of allegedly false information against a state, the latter has at least two options – the right to correct and the right to reply.¹⁸⁷ As to the first option, it is available in the Article II of the 1953 Convention on the International Right of Correction, giving countries the opportunity to suggest via communiqué their version of the incorrect or truncated facts spread by another state.¹⁸⁸ Upon receiving such communiqué, the state responsible for the dissemination of fake information, should transmit this information within its territories *‘through the channels customarily used*

¹⁸⁶ *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015)

¹⁸⁷ Björnstjern Baade, ‘Fake News and International Law’ [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022

¹⁸⁸ *Ibid.* referring to UN General Assembly, Convention on the International Right of Correction, 16 December 1952, A/RES/630(VII), Article II; Elizabeth A. Downey, ‘A Historical Survey of the International Regulation of Propaganda’ [1984] 5(1) Michigan Journal of International Law 341-360, p. 350

for the release of news concerning international affairs for publication'.¹⁸⁹ Moreover, in case this state refuses to share the corrected information, it can be transmitted by the UN Secretary-General upon the victim state's request.¹⁹⁰

Realistically speaking, this form of reaction is unlikely to bring actual results to victim states, considering that not only the authors of this content would appeal to their right to freedom of expression, yet also given the fact that this communiqué would not influence the decisions of privately owned media if their connection with the state is not proven.

Furthermore, liberal and democratic states and communities not only would abstain from using this remedy but would also possibly condemn its use by other states, pursuing their desire of free press, independent journalism and pluralism. Nonetheless, this concept might rather be more useful for less-developed states who quite literally might need a good press yet may not influence it as much as bigger or more powerful countries.

A legitimate way of responding to propaganda might be counterpropaganda, conducted by the states affected by the use of information against them.¹⁹¹ The result of this measure might be more achievable, considering it does not involve any third actors, namely other states or international bodies. For example, the actions of the Office of the President of the United States that took place in January-February 2022 predeceasing the Russian invasion of Ukraine could be considered counterpropaganda. By publicly releasing intelligence on Russia's plans and operations,¹⁹² the US was countering Russia's narratives about self-defence or revealing Russian Armed Forces as actual aggressors.

¹⁸⁹ Björnstjern Baade, 'Fake News and International Law' [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022 referring to UN General Assembly, Convention on the International Right of Correction, 16 December 1952, A/RES/630(VII), Art III

¹⁹⁰ Björnstjern Baade, 'Fake News and International Law' [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022 referring to UN General Assembly, Convention on the International Right of Correction, 16 December 1952, A/RES/630(VII), Art IV

¹⁹¹ Björnstjern Baade, 'Fake News and International Law' [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022

¹⁹² Hitoshi Nasu, 'Deepfake Technology in the Age of Information Warfare' (Lieber Institute West Point, 1 March 2022) <<https://lieber.westpoint.edu/deepfake-technology-age-information-warfare/>> accessed 15 June 2022

At the same time, while it encourages pluralism and free flow of information, it can result in post-truth or manipulations. Finally, its result also inevitably depends on how powerful the state disseminating counterpropaganda is and how much funds it can allocate to achieve its objectives.

Another way of combating illegal speech is bringing to responsibility private and non-state actors responsible for its spread.¹⁹³ Thus, the states, having their positive obligations under international human rights law are obliged to bring to accountability those persons whose activities violate the rights of others, national security, territorial integrity, public safety, or other protected values recognised as such under international law.

In practice, however, this scenario might be unachievable considering that usually propaganda which seems to be conducted by states is distributed by anonymous, unknown, unofficial, or even concealed individuals or programs.¹⁹⁴ In turn, not only this makes the process of tracing them back to the governments hardly possible, but also can make them undetectable, complicating the procedure for their accountability.

When it comes to freedom of expression and human-rights compliant ways of its restriction, as a general rule both states and private companies should have their input on the matter to impose certain limitations and evaluate their legality and effectiveness.¹⁹⁵ For these reasons, international and domestic law, as well as practice of states and non-state entities provide a number of ways created to protect individuals from the use and results of false information and propaganda. Among others, these rules include blocking and suspension of those who spread such type of content, adjusting

¹⁹³ Björnstjern Baade, 'Fake News and International Law' [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022

¹⁹⁴ Björnstjern Baade, 'Fake News and International Law' [2018] 29(4) European Journal of International Law <<https://doi.org/10.1093/ejil/chy071>> accessed 15 June 2022 referring to Nicholas Pronay and Philip M. Taylor, 'An Improper Use of Broadcasting' The British Government and Clandestine Radio Propaganda Operations against Germany during the Munich Crisis and After' [1984] 19(3) Journal of Contemporary History 357-384

¹⁹⁵ David Kaye, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UNHRC, 74th Session, Agenda item 70 (b), UN Doc A/74/486 (9 October 2019), para 51, 58; David Kaye, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UNHRC, 38th Session, Agenda item 3, UN Doc A/HRC/38/35 (6 April 2018), para 45; Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex), Principle 16; Council of Europe, Guidance Note adopted by the Steering Committee for Media and Information Society, 19th plenary meeting, 19-21 May 2021, 47

the platforms' algorithms and imposition of filters, watermarking of information,¹⁹⁶ adding of interest notices or 'strikes'¹⁹⁷ and many more.

One of the popular and quite effective ways to combat disinformation and propaganda is either blocking of certain content that is considered unlawful or banning those users who actively disseminate it endangering others to the consequences that arise from its spread. It also reduces tensions within the society where the speech was published, which can be illustrated by an example of permanent blocking of a former president of the United States Donald Trump following his spread of disinformation during the 2020 Presidential US elections. Thus, his deplatforming on several social media platforms resulted in the decrease of disinformation on the alleged election fraud by 73%,¹⁹⁸ and plunged the use of hashtags #FightforTrump, #HoldTheLine, and 'March for Trump' by 95% or more.¹⁹⁹ At the same time, blocking of individuals or their publications might result in a backlash, as it can attract more of public's attention because of the 'Streisand effect'.²⁰⁰ Nevertheless, considering how fast information can travel online and how it can lead to atrocious consequences offline, intermediaries, states and non-state entities should make their input into changing the approach to content removal, changing it to more prompt and rapid.

According to international scholars, banning of publicly available content during armed conflicts would also safeguard civilians and other protected groups from attacks on them, as well as from the deficiency of reliable and fact-checked information, reducing the spread of terror against them.²⁰¹ Such approach, however, requires an

¹⁹⁶ Eric Jensen, Summer Crockett "Deepfakes" and the law of armed conflict: are they legal? (Lieber Institute West Point, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

¹⁹⁷ Jacob Kastrenakes, 'Facebook and TikTok block hashtags used to spread election conspiracy theories' (*The Verge*, 5 November 2020) <<https://www.theverge.com/2020/11/5/21551717/facebook-tiktok-block-election-conspiracy-theory-hashtags-twitter-monitoring>> accessed 15 June 2022; Twitter Coms 'We have placed a public interest notice on this Tweet from @realdonaldtrump' (29 May 2020) <<https://twitter.com/twittercomms/status/1266267446979129345>> accessed 15 June 2022

¹⁹⁸ Elizabeth Dwoskin et al., 'Misinformation dropped dramatically the week after Twitter banned Trump and some allies' (*The Washington Post*, 16 January 2021) <<https://www.washingtonpost.com/technology/2021/01/16/misinformation-trump-twitter/>> accessed 15 June 2022

¹⁹⁹ Madison Pauly, 'Deplatforming Trump Is Already Having a Huge Impact' (Mother Jones, 17 January 2021) <<https://www.motherjones.com/media/2021/01/trump-twitter-ban-misinformation-impact-signal-labs-report/>> accessed 15 June 2022

²⁰⁰ Hitoshi Nasu, 'Deepfake Technology in the Age of Information Warfare' (Lieber Institute West Point, 1 March 2022) <<https://lieber.westpoint.edu/deepfake-technology-age-information-warfare/>> accessed 15 June 2022

²⁰¹ Eric Jensen, Summer Crockett "Deepfakes" and the law of armed conflict: are they legal? (Lieber Institute West Point, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

amendment of new treaty provisions or creation of customary rules apart from intermediaries' courtesy and willingness to ensure the measure's effectiveness.

Another helpful feature might be the establishment of platforms' obligation to amend filters capable to detect and flag potentially untruthful or harmful information.²⁰² Such filters might be elucidated in a '*public interest*' notice,²⁰³ which does not restrict the flow of information as such yet at the same time calls users' attention to the fact that the content might be not reliable. For instance, Twitter and Facebook put labels on potentially '*inaccurate or offensive*' publications,²⁰⁴ allowing users to decide whether they find their publisher trustworthy enough. Societal rigidities can also be reduced by excluding questionable content from recommendations²⁰⁵ or even muting reactions and shares to it.²⁰⁶ Although similarly to the alternative listed above it can be much more effective when prescribed under binding documents.

Accordingly, a lot of states and international organisations tend to work for the criminalisation of the creation and spread of disinformation, propaganda, and other types of malicious content.²⁰⁷ This part of the solution might be one of the most effective ones, as it not only allows to effectively punish and prevent these speech violations, yet also sets the tone for the state's general conduct on the matter. This, however, shall go further into creating similar prohibitions on international level declaring the use of the same tactics by states and non-state actors in peaceful times and especially during armed conflicts.

²⁰² Eric Jensen, Summer Crockett "“Deepfakes” and the law of armed conflict: are they legal?" (*Lieber Institute West Point*, 19 August 2020) <<https://lieber.westpoint.edu/deepfakes/>> accessed 15 June 2022

²⁰³ Andrew Hutchinson, 'Twitter Seeks to Clarify its Approach Relating to 'Public Interest' Tweets Which Break its Platform Rules' (*SocialMediaToday*, 16 October 2019) <<https://www.socialmediatoday.com/news/twitter-seeks-to-clarify-its-approach-relating-to-public-interest-tweets/565100/>> accessed 15 June 2022

²⁰⁴ Jacob Kastrenakes, 'Facebook and TikTok block hashtags used to spread election conspiracy theories' (*The Verge*, 5 November 2020) <<https://www.theverge.com/2020/11/5/21551717/facebook-tiktok-block-election-conspiracy-theory-hashtags-twitter-monitoring>> accessed 15 June 2022

²⁰⁵ Luca Bertuzzi, 'YouTube's algorithm fueling harmful content, study says' (*Euractiv*, 7 July 2021) <<https://www.euractiv.com/section/digital/news/youtubes-algorithm-fuelling-harmful-content-study-says/>> accessed 15 June 2022

²⁰⁶ Shannon Bond, 'Facebook and Twitter Limit Sharing 'New York Post' Story About Joe Biden' (*NPR*, 14 October 2020) <<https://www.npr.org/2020/10/14/923766097/facebook-and-twitter-limit-sharing-new-york-post-story-about-joe-biden>> accessed 15 June 2022

²⁰⁷ Hitoshi Nasu, 'Deepfake Technology in the Age of Information Warfare' (*Lieber Institute West Point*, 1 March 2022) <<https://lieber.westpoint.edu/deepfake-technology-age-information-warfare/>> accessed 15 June 2022

Conclusively, international law provides a vivid basis for regulation and potential restriction of propaganda and disinformation. While the principles of non-intervention, sovereignty, and the prohibition of the use of force might not apply to every case of misuse of individuals' and states' right to a free speech, they construct general boundaries for it, hinting at the possibility of international responsibility when all the necessary preconditions are met.

In turn, the application of international humanitarian law to the use of information remains challenging, further development of the rules based on the principle of humanity, prohibition of incitement of IHL violations, and the prohibition of the use of terror toward the civilian population might lead to a proper integration of legal response to the improper use of information in times of armed conflict. Moreover, further elaboration of digital perfidy will potentially reduce harmful consequences caused by the spread of information during warfare.

International criminal law remains one of the most promising spheres of international law in terms of the material responsibility of individuals for their speeches when they have the elements of incitement to genocide, facilitating the crime commission, or the signs of commanders' responsibility.

It also follows that while the right to freedom of expression protects individuals' rights to express their opinions, it does not remain boundless as the responsibility for misusing this right comes when these expressions are unlawful. Furthermore, there is a possibility of qualifying such content as being unprotected, considering the concept of abuse of rights available in the European human rights framework.

Conclusively, the international legal framework shows clear indications of developing reactions towards offensive speech. Nevertheless, it also requires further improvement, particularly on the foundation of developed special rules on the matter.

CHAPTER 2

RUSSIA'S USE OF PROPAGANDA AND DISINFORMATION AGAINST UKRAINE: CASE STUDY

Use of information by the Russian Federation against other states is nothing new. Russian government is famous for its propaganda and information campaigns that target western democracies, its neighbouring states and international community in general. When it comes to Ukraine, Russia has been using information in and against it long before the armed conflict began. The connotations of 'brotherly nations' and similarities between Russian and Ukrainian societies with time were replaced with the calls that '*Ukraine is not even a state*'²⁰⁸ quickly followed by allegation in *coup d'état*, Nazi government, and genocide of Russian speaking population, all aimed at discrediting Ukrainian government, dehumanizing of Ukrainian nation, and preparing Russian society for justifying the crimes committed by its government and armed forces against other nations. The success of Russian propaganda can also be explained by the fact that western democracies have shown their unpreparedness for combating information attacks properly, as well as '*a certain information vacuum*' regarding the situation in Ukraine, especially among countries of Eastern Europe.²⁰⁹ Moreover, according to the data analysed by the Pew Research Centre, as of 2021, more than 60% of the Slovakian population had a positive attitude towards Russia despite its aggressive policies.²¹⁰ So, considering the popularity of Russian narratives and its relative success, it is possible to claim its responsibility under any branch of international law?

²⁰⁸ Olga Allenova, 'The NATO bloc split up into blocking stakes' (*Kommersant*, 6 April 2008) <<https://www.kommersant.ru/doc/877224>> accessed 15 June 2022

²⁰⁹ Yevheniy Yaroshenko, 'Young people in Eastern Europe are vulnerable to Russian propaganda' (*Crimea SOS*, 1 January 2021) <<https://krymsos.com/molod-krayin-shidnoyi-yevropy-vrazlyva-do-rosijskoyi-propagandy-krymsos/>> accessed 15 June 2022

²¹⁰ Yevheniy Yaroshenko, 'Young people in Eastern Europe are vulnerable to Russian propaganda' (*Crimea SOS*, 1 January 2021) <<https://krymsos.com/molod-krayin-shidnoyi-yevropy-vrazlyva-do-rosijskoyi-propagandy-krymsos/>> accessed 15 June 2022 referring to Christine Huang and Jeremiah Cha, 'Russia and Putin receive low ratings globally' (*Per Research Center*, 7 January 2020) <<https://www.pewresearch.org/fact-tank/2020/02/07/russia-and-putin-receive-low-ratings-globally/>> accessed 15 June 2022

1. Russian preparation for the armed conflict and full-scale invasion in Ukraine and legal qualifications if these actions under international law

Long before Russian invasion and occupation in Crimea, it started its informational invasion there to both prepare Russian society for the future illegal annexation of Ukrainian territories and raise uncertainties within the Ukrainian society creating tensions between people living in different parts of Ukraine. For example, since 2000s Russia tried to develop a sense of social and political kinship with Russian Federation among the Crimean population. Russian channels that were accessible in Crimea constantly suggested the lack of Ukraine's ability to rule in Crimea, considering its lack of financing and help of the peninsula.²¹¹ Instead, Russia had been constantly 'donating' millions of dollars for reconstruction of Crimean architecture, financing of Cossack organizations and creation of Russian-Crimean professional platforms of teachers, university professors, cultural figures, librarians, and officials.²¹² Moreover, it also intervened in the cultural life in Crimea: according to the report of Crimean press in 2007, the Russian Ministry of Defence financed the children's military-patriotic organizations in Crimea, while other Russian institutions organised concerts and festivals there.²¹³

Furthermore, approximately a year before the occupation, Russian tactics intensified. For example, it used the frequency of the Crimean radio station "Trans-M Radio" to broadcast Russian news instead of Crimean and Ukrainian.²¹⁴ This one radio station is just a drop in the ocean when it comes to the Russian interference in the Crimean information space, as it used this and many other channels to create the atmosphere of affiliation of the peninsula with Russian Federation.

Another sign of preparation of Russian society for a prolong and widespread aggression against Ukraine might be found in the roots of its "Nazi propaganda" in Ukraine. A very popular message among Russian propagandists is that the Revolution of Dignity resulted in a pro-Nazi *coup d'état* that replaced all members of "legitimate"

²¹¹ Larysa Voloshyna, 'Special operation "Occupation" How Russian special services created the conditions for the invasion of Crimea' (*Ukrayinska Pravda*, 28 July 2021) <<https://www.pravda.com.ua/columns/2021/07/28/7302009/>> accessed 15 June 2022

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Ibid.*

government and started the “internal conflict” in Donbas. For these reasons, promptly after the occupation of Crimea and armed intervention at the East of Ukraine, Russian Federation popularised the phrase ‘*We can do it again!*’²¹⁵ when started aggressively using it during parades on the 9th of May every year,²¹⁶ and then the Russian government transformed it into the state agenda, declaring that Russia is prepared to answer ‘*respond to any aggressor who dares to repeat the attack of Nazi Germany on the Soviet Union*’.²¹⁷

The same rhetoric was repeatedly used in Vladimir Putin’s speeches. For example, on 21st February 2022, three days prior the full-scale invasion in Ukraine, he stated that ‘*Ukrainian society was faced with the rise of far-right nationalism, which rapidly developed into aggressive Russophobia and neo-Nazism*’,²¹⁸ while when declaring the war on 24th February 2022, he reiterated that Russian government had ‘*no other option to protect Russia*’²¹⁹ from ‘*constant threat emanating from the territory of modern Ukraine*’.²²⁰

While the armed aggression against Ukraine is recognized as the use of force and violation of international law, the question here is, whether there is any possibility to recognize Russia’s policies predeceasing these events as unlawful. At the first glance, such actions could have been viewed as the violation of Articles 2, 3, and 4 of the International Convention Concerning the Use of Broadcasting in the Cause of Peace, as Russian Federation’s conduct could be classified as an incitement to war against Ukraine, and the convention covers both propaganda and disinformation.²²¹

²¹⁵ Konstantin Baranovsky, “‘We can do it again!’: who actually came up with this phrase” (*Russkaya semerka*) <<https://russian7.ru/post/mozhem-povtorit-kto-na-samom-dele-pr/>> accessed 15 June 2022

²¹⁶ Sergey Medvediev, “‘We can do it again’” (*Radio Svoboda*, 15 January 2020) <<https://www.svoboda.org/a/30377837.html>> accessed 15 June 2022

²¹⁷ ‘Putin on the phrase “We can repeat”: Russia is ready to respond to any aggressor’ (*Nastoyashchee vremya*, 10 March 2020) <<https://www.currenttime.tv/a/putin-will-repeat/30479371.html>> accessed 15 June 2022

²¹⁸ Max Fisher, ‘Word by Word and Between the Lines: A Close Look at Putin’s Speech’ (*The New York Times*, 23 February 2022) <<https://www.nytimes.com/2022/02/23/world/europe/putin-speech-russia-ukraine.html>> accessed 15 June 2022

²¹⁹ The Spectator, ‘Full text: Putin’s declaration of war on Ukraine’ (*The Spectator*, 24 February 2022) <<https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine>> accessed 15 June 2022

²²⁰ Vusala Abbasova, ‘Putin Announces ‘Special Military Operation’ in Ukraine’ (*Caspian News*, 24 February 2022) <<https://caspiannews.com/news-detail/putin-announces-special-military-operation-in-ukraine-2022-2-24-16/>> accessed 15 June 2022

²²¹ Talita de Souza Dias, ‘Russia’s “genocide disinformation” and war propaganda are breaches of the International Convention Concerning the Use of Broadcasting in the Cause of Peace and fall within the ICJ’s jurisdiction’ (*EJIL:Talk!*,

Nevertheless, it is impossible for Ukraine to claim the violation of this Convention, considering it is not a party to it. Thus, the only possibility to even invoke the treaty, is for other parties to allege its violation, considering the document also prohibits the actions of states that are capable of harming ‘*good international understanding*’.²²² Yet, the prospects of bringing the claim under the Broadcasting Convention before the International Court of Justice are almost inexistent, as when ratifying the Convention, Russia has made a reservation to the jurisdictional clause enshrined in Article 7 of the document.²²³ For these reasons, unless Russian Federation consents to the ICJ’s jurisdiction in a separate agreement, the document cannot be relied on before the ICJ and there is no possibility to argue its violations under Russia’s behalf.

Finally, it is very unlikely that these actions amount to a violation of principles of sovereignty, non-interference, and the prohibition of use of force. Even if we consider the interception of radio frequencies and interruption of Ukrainian broadcasting there as an encroachment on Ukrainian internal affairs, these actions will not reach a required level of severity to be viewed as a violation of any of these principles.

In conclusion, today’s legal framework governing the use of information in and against another state is unprepared for the proper response even when such use leads to harmful consequences. Not only the requirement of direct connection between disseminated content and the damage caused is often not fulfilled, yet also existing treaty norms are not sufficient to provide and adequate reaction when the needed threshold is met. Accordingly, there is a need to invoke other branches of international law to try and bring Russia to international responsibility.

2. Russian tactics of informational attacks during a full-scale invasion in Ukraine: a reaction under international humanitarian law

Following decades of internal and external propaganda and disinformation, Russia’s methods in times of armed conflict only intensified. Numerous evidence shows their

4 March 2022) <<https://www.ejiltalk.org/russias-genocide-disinformation-and-war-propaganda-are-breaches-of-the-international-convention-concerning-the-use-of-broadcasting-in-the-cause-of-peace-and-fall-within-the/>> accessed 15 June 2022

²²² *Ibid.*

²²³ *Ibid.*

intention was to capture TV and radio stations ‘within the first hours’ of the invasion to declare their victory,²²⁴ disable satellite communications with electronic warfare systems,²²⁵ isolate occupied territories from Ukrainian informational spaces and block any news ‘from the outside world’,²²⁶ as well as brainwash the local population of the occupied territories by spreading Russian propaganda to them.²²⁷

For example, according to the plan of the information campaign, developed by the so-called ‘Ministry of Information of the DPR’ on the instructions of the Russian supervisors, the Russian or Russian-controlled forces had to ‘raise the spirit’ of the so-called DPR servicemen, promote the service there, as well as form a loyal attitude among the inhabitants of the occupied territories.²²⁸ For this they planned to communicate via radio, TV, social media, and other means of exercising of speech.²²⁹

Furthermore, similar manual was also found by the Ukrainian armed forces after liberation of Dymer (Kyiv region).²³⁰ The handbook that belong to Russian servicemen, contains a set of lies or manipulated facts, by virtue of which the occupying forces aimed to create doubts among civilian population, and convince them into believing in Russian version of historical facts.

Once again, these actions, despite being capable of leading to devastating consequences, are not explicitly prohibited under the rules of IHL. In the right context some of their manifestations, especially when combined with physical acts can potentially reach the threshold for the violation of the prohibition of terror of civilian population. Besides, there are no indications that they are perceived by states as ‘attacks’ in the meaning of the IHL, especially considering that the United States of

²²⁴ Tommy Ahonen, ‘An epic battle for Kyiv How Ukrainians humiliated Putin and his army’ [translated by Dmytro Ivakhnenko] (*Glavkom*, 3 April 2022) <<https://glavcom.ua/kyiv/publications/epichna-bitva-za-kijiv-yak-ukrajinci-prinizili-putina-ta-yogo-armiyu-835265.html>> accessed 15 June 2022

²²⁵ ‘WARNING! Residents of all regions! Orcs brought TIRADA-2 to Ukraine’ (*Ne Nashi (Telegram channel)*, 8 March 2022) <https://t.me/ne_nashi/730> accessed 15 June 2022

²²⁶ ‘The occupiers created an information collapse in the Kherson region’ (*Operatyvnyy ZSU (Telegram channel)*, 2 June 2022) <<https://t.me/operativnoZSU/26902>> accessed 15 June 2022

²²⁷ ‘Plan of the information campaign of the racists in Donbass: tasks, tools, channels, deadlines’ (*InformNapalm*, 1 June 2022) <<https://informnapalm.org/ua/plan-informatsiinoi-kampanii-rashysti/>> accessed 15 June 2022

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Melaniya Podolyak, ‘Employees of the National Museum of History of Ukraine found a Muscovite manual in Dymer’ (*Melaniya Podolyak (Telegram channel)*, 25 May 2022) <<https://t.me/melaniyapodolyak/736>> accessed 15 June 2022

America openly confirmed their assistance in ‘offensive cyber operations’²³¹ yet they are clearly not considered as a party to the armed conflict between Ukraine and Russia.

On the other hand, other acts of Russian Federation can be viewed as a violation of the humanity principle or the prohibition of incitement of IHL violations. For example, when Russian forces took control over Mariupol, they started distributing mobile TVs,²³² newspapers, and leaflets²³³ with propagandistic materials, containing information on how Russian military together with the ‘DPR militia’ took control over the city ‘avoiding mass destructions’.²³⁴ Taking into account the amount of reported war crimes committed by Russian military took place in Mariupol,²³⁵ these actions are not only cynical in their nature, yet they also infringe civilians’ honour and dignity, as well as justify all the atrocities committed by the Armed Forces of the Russian Federation, indulging this conduct in the future.

Finally, when the scale of the Bucha massacre was discovered and a big variety of Ukrainian and international media were sharing the information on the scope of atrocities,²³⁶ it was reported that the Russian search engine and pro-Russian media outlets were either hiding photos of victims and pictures destroyed city or calling them fake or being staged by the Ukrainian army.²³⁷ Moreover, such materials were disseminated in Russian military hospitals, along with staged photos of ‘liberated

²³¹ Jessica Lyons Hardcastle, ‘US ran offensive cyber ops to support Ukraine, says general’ (*The Register*, 2 June 2022) <https://www.theregister.com/2022/06/02/nakasone_us_hacking_russia/> accessed 15 June 2022

²³² ‘Mariupol For now Propaganda’ (*Andryushchenko Time (Telegram channel)*, 24 May 2022) <<https://t.me/andriyshTime/1052>> accessed 15 June 2022; ‘Paddy wagons with large screens broadcasting Russian TV channels were launched along the streets of Mariupol’ (*TJournal*, 26 May 2022) <<https://tjournal.ru/tech/633462-policam-mariupolya-zapustili-avtozaki-s-bolshimi-ekranami-na-kotoryh-transliruyut-rossiyskie-telekanaly>> accessed 15 June 2022

²³³ ‘Mariupol Propaganda on the march’ (*Andryushchenko Time (Telegram channel)*, 27 May 2022) <<https://t.me/andriyshTime/1093>> accessed 15 June 2022

²³⁴ ‘Mariupol For now Propaganda’ (*Andryushchenko Time (Telegram channel)*, 24 May 2022) <<https://t.me/andriyshTime/1052>> accessed 15 June 2022; ‘Mariupol Propaganda on the march’ (*Andryushchenko Time (Telegram channel)*, 27 May 2022) <<https://t.me/andriyshTime/1093>> accessed 15 June 2022

²³⁵ Paul Niland, ‘Putin’s Mariupol Massacre is one of the 21st century’s worst war crimes’ (*Atlantic Council*, 24 May 2022) <<https://www.atlanticcouncil.org/blogs/ukrainealert/putins-mariupol-massacre-is-one-the-worst-war-crimes-of-the-21st-century/>> accessed 15 June 2022

²³⁶ Igor Kossov, ‘Uncovering the scope of the Bucha massacre’ (*The Kyiv independent*, 22 April 2022) <<https://kyivindependent.com/national/uncovering-the-scope-of-the-bucha-massacre/>> accessed 15 June 2022; Malachy Browne, David Botti and Haley Willis ‘Satellite images show bodies lay in Bucha for weeks, despite Russian claims’ (*The New York Times*, 4 April 2022) <<https://www.nytimes.com/2022/04/04/world/europe/bucha-ukraine-bodies.html>> accessed 15 June 2022

²³⁷ ‘Yandex VS Google’ (*Ne Nashi (Telegram channel)*, 4 April 2022) <https://t.me/ne_nashi/815> accessed 15 June 2022

Ukrainians²³⁸ in the occupied cities to convince Russian military to join the ‘military operation’ in Ukraine and consequently commit the same violations.

Nevertheless, given the lack of explicit prohibitions of such actions under the rules of international humanitarian law, most of them can be prosecuted and adjudicated rather as parts of other international crimes or the evidence of hostile context in which these acts were committed. For these reasons, international legal framework urgently needs to be reviewed and this type of conduct needs to be severely restricted.

3. Russian propaganda and international criminal law: possible evidence of emergence and evolution of genocidal intent

Over the years Russian media and members of the government repeatedly denied the existence of Ukrainian identity or even Ukrainian statehood, described Ukrainians as a threat for Russians, and used derogatory and dehumanising language against them. While the earliest appearance of hostile language against Ukrainians in Russian public media spaces dates back at least to 2008-2009,²³⁹ after the speech on 24 February 2022, Russian authorities repeatedly called on Ukrainian forces to lay down their weapons, saying Russia was acting to prevent a genocide against Russian-speakers and aiming for the ‘demilitarization and de-Nazification of Ukraine’.²⁴⁰ While there is no evidence of genocide being committed by Ukraine, these claims were used for a broader disinformation campaign aimed at creating a pretext to invade Ukraine.²⁴¹ For instance, according to a historian of the Nuremberg Trials Francine Hirsch Russian media campaign targeting Ukrainians should be viewed as an incitement to genocide, namely calls to destroy Ukrainian nation ‘in whole or in part’.²⁴² Yet, it should be noted that the

²³⁸ Markiyian Klimkovetsky, ‘Wounded Russian soldiers are persuaded to return to war, spreading fakes about the “successes” of Russia – intelligence’ (*Hromadske*, 11 April 2022) <<https://hromadske.ua/posts/poraneni-rosijskih-soldat-iv-perekonuyut-povertatisya-na-vijnu-poshiryuyuchi-fejki-pro-uspilhi-rf-rozvidka>> accessed 15 June 2022

²³⁹ Clara Apt, ‘Russia’s Eliminationist Rhetoric Against Ukraine: A Collection’ (*JustSecurity*, 5 June 2022) <<https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>> accessed 15 June 2022

²⁴⁰ Sonam Sheth and John Haltiwanger, ‘Putin tried to justify his war against Ukraine by calling for the ‘de-Nazification’ of a democratic country led by a Jewish president’ (*Insider*, 24 February 2022) <<https://www.businessinsider.com/putin-tries-justifying-ukraine-war-denazification-zelensky-jewish-president-2022-2->> accessed 15 June 2022

²⁴¹ *Ibid.*

²⁴² Rancine Hirsch, ‘De-Ukrainization’ is genocide — Biden was right to sound the alarm’ (*The Hill*, 14 April 2022) <<https://thehill.com/opinion/international/3267060-de-ukrainization-is-genocide-biden-was-right-to-sound-the-alarm/>> accessed 15 June 2022

calls for partial elimination of Ukrainians have been a constant element of Russian informational campaigns.²⁴³

On 6 March 2022, an article by a Russian propagandist Dmitry Kiselev came out, where he described the plans for denazification of Ukraine, saying that the ‘Ukrainian Nazis’ should be tried by a court and that a moratorium on a death penalty should be abolished.²⁴⁴ He also proposed to treat Ukrainian population as ‘Nazi criminals’, offering to divide Ukrainian society into four groups and subject them ‘to [the group’s] own measures – from hanging to a ban on holding public office’.²⁴⁵ Finally, he also proposed a ‘cleansing’ of Ukrainian education system and public organisations, ban ‘Nazi’ symbols, rename the streets and close the Ukrainian ‘Nazi media’.²⁴⁶ As it follows from Russian approach to the armed conflict against Ukraine, said ‘denazification’ clearly directed at the diminishing and destruction of Ukrainian identity, further leading to its abolition.

Furthermore, on 3 April an article by Timofey Sergeytsev ‘What Russia should do with Ukraine’ was published by April Russian State-controlled news agency RIA News.²⁴⁷ There the openly admits Russia’s need in ‘de-Ukrainization’, namely abolition of the ‘large-scale artificial inflation of the ethnic component of self-identification’ of Ukrainians.²⁴⁸ For these reasons it was even named ‘a genocide handbook’ by Timothy Snyder.²⁴⁹

²⁴³ Clara Apt, ‘Russia’s Eliminationist Rhetoric Against Ukraine: A Collection’ (*JustSecurity*, 5 June 2022) <<https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>> accessed 15 June 2022 referring to Stanislav Melamed “‘They need to be partially eliminated’ – Mikhail Khazin speaks about Ukraine and Ukrainians.’ (29 December 2016) <<https://www.youtube.com/watch?v=Vq5Fzkr9Tec>> accessed 15 June 2022

²⁴⁴ Dmitry Kiselev, ‘Denazification of Ukraine: what should be outlawed’ (*Vesti*, 6 March 2022) <<https://www.vesti.ru/article/2685717>> accessed 15 June 2022 via <<https://webcache.googleusercontent.com/search?q=cache:TCiQVjR4RvsJ:https://www.vesti.ru/article/2685717+&cd=6&hl=ru&ct=clnk&gl=ua>>

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ Timofey Sergeytsev, ‘What should Russia do with Ukraine?’ (*RIA News*, 3 April 2022) <<https://ria.ru/20220403/ukraina-1781469605.html>> accessed 15 June 2022; UCMC press center, ‘Justification of genocide: Russia has openly declared its desire to exterminate Ukrainians as a nation’ (*Ukraine Crisis media center*, 4 April 2022) <<https://uacrisis.org/en/justification-of-genocide-russia-has-openly-declared-its-desire-to-exterminate-ukrainians-as-a-nation>> accessed 15 June 2022

²⁴⁸ UCMC press center, ‘Justification of genocide: Russia has openly declared its desire to exterminate Ukrainians as a nation’ (*Ukraine Crisis media center*, 4 April 2022) <<https://uacrisis.org/en/justification-of-genocide-russia-has-openly-declared-its-desire-to-exterminate-ukrainians-as-a-nation>> accessed 15 June 2022

²⁴⁹ Timothy Snyder, ‘Russia’s genocide handbook’ (Thinking about, 8 April) <https://snyder.substack.com/p/russias-genocide-handbook?utm_campaign=post&utm_source=direct&s=r> accessed 15 June 2022

These articles being a drop in the ocean reflect the general context of Russian media space and the perception they are create within their society, as such content comes in all forms and sources. Genocidal statements in Russia appear in Putin’s speeches and articles, state television broadcasts, news articles, books, social media²⁵⁰ and basically in any place where a person can disseminate them.

Likewise, considering an aggressive treatment of Ukrainian population in the occupied settlements by the Russian military merely because of their national identity it can be said that the tactics perceived by the Russian media are quite effective. Peter Pomerantsev, a British journalist, writer, and propaganda researcher, confirms the effectiveness of these methods, pointing out that Russian soldiers distinctly reason their behaviour in Ukraine, in particular, by the fact that they came there to exterminate the Nazis.²⁵¹

An existence of a genocidal intent in their actions can be alleged, especially considering that international experts already recognised ‘*some of the genocidal rhetoric*’ in Russian crimes,²⁵² in particular in launching of a ‘Russification’ process in education, history, and cultural spheres,²⁵³ systematic persecution of Ukrainian activists and members of the armed forces,²⁵⁴ and deportation of Ukrainian civilians to filtration camps in Russia or so-called DLPR.²⁵⁵ Thus, Russian their broadcasts eventually

²⁵⁰ Clara Apt, ‘Russia’s Eliminationist Rhetoric Against Ukraine: A Collection’ (*JustSecurity*, 5 June 2022) <<https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>> accessed 15 June 2022

²⁵¹ Angelina Karyakina, ‘“The Kremlin always has problems with motivation” - propaganda researcher Peter Pomerantsev’ (*Suspilne*, 9 May 2022) <<https://suspilne.media/237490-u-kremla-zavzdi-problemi-z-motivacieu-doslidnik-propagandi-piter-pomerancev/>> accessed 15 June 2022

²⁵² Elizabeth Whatcott, ‘Compilation of Countries’ Statements Calling Russian Actions in Ukraine “Genocide”’ (*JustSecurity*, 20 May 2022) <<https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/>> accessed 15 June 2022

²⁵³ Alexander Yankovsky, ‘“Preparation for annexation” how occupiers carry out “Russification” of the south of Ukraine’ (*Radio Svoboda*, 26 May 2022) <<https://www.radiosvoboda.org/a/novyny-pryazovya-rusyfikatsiya-pivdnyia-ukrayiny-portnikov/31869524.html>> accessed 15 June 2022

²⁵⁴ Sergey Mokrushin, ‘“Threatened to take to Crimea” Is Russia preparing show trials of those abducted in Kherson?’ (*Krym Realii*, 11 April 2022) <<https://ru.krymr.com/a/kherson-pokhishcheniya-aktivistov-krym/31797283.html>> accessed 15 June 2022

²⁵⁵ ‘Russian troops forcibly deport residents of Mariupol to Russia - the city council’ (*Radio Svoboda*, 19 March 2022) <<https://www.radiosvoboda.org/a/news-mariupol-nasylny-vyvezennia-do-rosii/31761205.html>> accessed 15 June 2022

became capable of pandering the commission of international crimes by Russian military, allegedly including the crime of genocide.²⁵⁶

Following this reasoning, Prosecutor General's Office of Ukraine has already started acting towards bringing to responsibility of media workers, public figures, and celebrities, for alleged incitement. Thus, the OPG has established that because Russian journalists, namely Dmytro Kiselyov and Olga Skabeeva had frequently justified the conduct of the military-political leadership of Russian Federation and called for the seizure of Ukrainian territories, they were suspected of calling for violations of Ukraine's territorial integrity, a crime punishable under the Criminal code of Ukraine.²⁵⁷ Even though this indictment covers an incitement to violations of territorial integrity and not an incitement to genocide, it still shows the potential for prosecution of public media workers and an actual threat of offensive speech.

Conclusively, even though there are not enough evidence yet to convince Russian political and military leadership in the commission of war crimes, crimes against humanity or the crime of genocide, incitement to genocide can be proven.

Generally, international legal framework is genuinely weak when it comes to reaction on inciting content. International community did not work out a unified approach to timely combat Russia's information campaigns that eventually fuelled a full-scale invasion in Ukraine, numerous international crimes, and violations in international law.

For these reasons, international criminal law is the most promising branch of international law considering its capabilities to convict those persons who broadcast offensive speech. Thus, numerous Russian propagandists can be brought to justice

²⁵⁶ Julian Borger, 'Russia is guilty of inciting genocide in Ukraine, expert report concludes' (*The Guardian*, 27 May 2022) <<https://www.theguardian.com/world/2022/may/27/russia-guilty-inciting-genocide-ukraine-expert-report>> accessed 15 June 2022 referring to The New Lines Institute and Raoul Wallenberg Centre, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) <<https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>> accessed 15 June 2022

²⁵⁷ 'Calls for armed aggression by the Russian Federation – "Kremlin mouthpieces" reported suspicion' (Office of the Prosecutor General, 22 March 2022) <<https://www.gp.gov.ua/ua/posts/zakliki-do-zbroinoyi-agresiyi-rf-ruporam-kremlya-povidomleno-pro-pidozru>> accessed 15 June 2022

before Ukrainian courts, International Criminal Court, or even other national courts under the rules of universal jurisdiction. Nonetheless, there is a vital need of more general legal prohibition of such conduct under public international law and IHL.

To sum up, Russian Federation has been ill-treating Ukrainians in the media sphere for decades without being held accountable for these violations. Statements of Russian politicians, media workers, propagandists, and ordinary media users inevitably created the preconditions for armed aggression towards Ukraine, fashioning the grounds for justification for international law abuses and human rights violations.

Furthermore, more and more signs of incitement to genocide, as well as the crystallisation of genocidal intent among members of Armed Forces of the Russian Federation are emerging, creating legal preconditions for further legal proceedings in national courts and International Criminal Court.

CONCLUSIONS

In this thesis, I intended to demonstrate a wide scale of dangers created by propaganda and disinformation, as well as to highlight both current possibilities for its regulation and opportunities for further improvement.

To answer the research question, in short, the international community is not powerless when it comes to combating the Russian Federation's use of information campaigns and propaganda in and against Ukraine. This response, however, requires a groundwork of all the actors involved: the international community as a whole, democratic states, international organisations, private individuals, and entities involved in speech dissemination.

Moreover, this long road to justice necessitates urgent responses based on the current legal framework, namely the combination of methods available under public international law, international humanitarian and criminal law, the legal framework of human rights law, as well as the responses available for private units. Nonetheless, international criminal law remains one of the most promising branches of international law on the matter.

Accordingly, acute reactions to hostile speech transmitted in and against Ukraine are needed, in particular, to reduce further losses among the civilian population and protraction of the commission of the international crime. However, this work did not aim at and possibly could not elaborate on all the legal issues and their possible resolution, given the complexity and the relative unpopularity of its subject matter. For these reasons, it requires more attention from legal academics and practitioners for its prompt resolution.

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