



Propaganda in Armed Conflict: Exploring Legal Ambiguities and Civilian Engagement

Isabel Lettner

George C. Marshall European Center for Security Studies, Garmisch-Partenkirchen, Germany, <https://www.marshallcenter.org/en>

Abstract: This article addresses the question of whether civilians engaged in disseminating propaganda can be construed as direct participants in hostilities. It focuses on the gaps created by a lack of international law provisions governing the use of propaganda during armed conflicts. The research contends that the categorization and classification of propaganda are vital, given the increasing employment of harmful digital information. An example of Ukrainian strategic communication campaigns illustrates the slippery slope created by easily accessible social media platforms and the danger posed by civilians spreading these so-called “strategic communication campaigns.” The research explores how the principle of distinction and the notion of direct participation apply to Ukrainian civilians. This article finds that multiple gray areas exist when analyzing the applicable legal frameworks surrounding the dissemination of propaganda. The study concludes that civilians spreading propaganda do not qualify as directly participating in hostilities, as the three-prong test of the International Committee of the Red Cross is not met.

Keywords: propaganda, disinformation, civilians, direct participation, distinction, armed conflict, Ukraine, Russia-Ukraine war, social media.

Introduction

Propaganda has served as a longstanding method for shaping public perceptions and narratives throughout the annals of history. As Dr. Raymond Dodge observes, “Propaganda of some kind is doubtless as old as human society.”¹ In the

¹ Raymond Dodge, “The Psychology of Propaganda,” *Religious Education* 15, no. 5 (1920): 241-252, <https://doi.org/10.1080/0034408200150502>, 241.

absence of strong connections to nature and community, people often experience a void and seek meaning by aligning themselves with larger entities. This quest for purpose can lead to personal and societal crises when individuals confront the perceived insignificance of their existence. Propaganda exploits this human desire for belonging and significance, frequently causing individuals to willingly embrace indoctrination.²

During World War II, the strategic use of propaganda vividly demonstrated its ability to sway public opinion and shape the narrative surrounding armed conflicts. One of the most iconic examples is the ‘I want YOU’ poster featuring Uncle Sam, which fervently urged citizens to enlist in the U.S. Army.³ Depicted as a representative of the U.S. government, Uncle Sam evoked a profound sense of duty and belonging, symbolized by his direct address and pointed gesture toward the viewer.⁴ The meticulous orchestration of colors, slogans, quotes, and public sentiment highlighted the transformation of political propaganda into a thriving wartime industry.⁵ However, the harmful effects of this persuasive power—often referred to as “paper bullets”—were recognized as nearly as dangerous as physical weapons.⁶ This recognition raises critical questions about the regulatory frameworks governing the employment of propaganda, particularly within the purview of international law. Does international humanitarian law (IHL) provide guidelines, rules, or regulations to control the dissemination of propaganda or its target audience? Moreover, what protections, if any, exist for civilians against the influence of propaganda? Do civilians unwittingly contribute to its spread, falling victim to its subtle allure? Addressing these questions requires an exploration of the intersection between propaganda and legal norms, especially in the context of armed conflict and humanitarian considerations.

Before delving into the central discourse of this article, it is imperative to clearly define key terms. Misinformation, disinformation, propaganda, and information warfare are frequently conflated yet carry distinct meanings. *Misinformation* refers to the unintentional dissemination of misleading information.⁷ In this case, the intent is not to deceive but rather to share a claim that contradicts

² Alexander V Laskin, “Defining Propaganda: A Psychoanalytic Perspective,” *Communication and the Public* 4, no. 4 (December 2019): 305-314, <https://doi.org/10.1177/2057047319896488>, 310.

³ “We Want You!” *Nabb Research Center Online Exhibit*, accessed February 25, 2024, <https://libapps.salisbury.edu/nabb-online/exhibits/show/propaganda/flag-waving/we-want-you->

⁴ “We Want You!”

⁵ “Powers of Persuasion,” *National Archives Online Exhibits*, accessed February 25, 2024, <https://www.archives.gov/exhibits/powers-of-persuasion>.

⁶ Leo J. Margolin, *Paper Bullets: Psychological Warfare in World War II* (Barajima, Japan: Barajima Books, 2020).

⁷ International Center for Not-For-Profit Law, “Legal Responses to Disinformation,” *ICNL*, accessed February 25, 2024, <https://www.icnl.org/wp-content/uploads/2021.03-Disinformation-Policy-Prospectus-final.pdf>, 2.

verifiable facts, often spread erroneously by people.⁸ Under Article 37(2) of the “Protocol Additional to the Geneva Conventions of 12 August 1949 (API),” misinformation is classified as a permissible ruse of war. “Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law.”⁹

On the other hand, *disinformation* is the intentional dissemination of false or misleading information.¹⁰ Pursuant to Article 37(1) of API, disinformation can be classified as perfidy, defined as “[a]cts 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 international law applicable in armed conflict, with intent to betray that confidence.”¹¹ Under international humanitarian law (IHL), such actions are strictly prohibited.

The term *propaganda*, often used interchangeably with misinformation and disinformation, defies a precise definition while simultaneously carrying a negative connotation. During the 1947 Conference of Government Experts, the use of propaganda to undermine prisoners of war’s morale was discussed.¹² However, many attendees believed the term was too difficult to define for its inclusion in the Geneva Conventions.¹³ Although not inherently proscribed by IHL, the U.S. Department of Defense classifies propaganda under psychological operations, defining it as “[a]ny form of adversary communication, especially of a biased or misleading nature, designed to influence the opinions, emotions, attitudes, or behavior of any group in order to benefit the sponsor, either directly or indirectly.”¹⁴ At the same time, the *Tallinn Manual*, a soft law instrument governing cyber issues and warfare, stipulates that “psychological operations such as dropping leaflets or making propaganda broadcasts are not prohibited even if civilians are the intended audience.”¹⁵

⁸ ICNL, “Legal Responses to Disinformation.”

⁹ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1)* [AP I], adopted June 8, 1977, 1125 UNTS 3, entered into force December 7, 1978, Art. 37(2), https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf.

¹⁰ ICNL, “Legal Responses to Disinformation,” 2.

¹¹ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949*, Art. 37(1).

¹² Eric De Brabandere, “Propaganda,” in *Max Planck Encyclopedia of Public International Law VIII*, ed. Rüdiger Wolfrum (November 2012), 507-519, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e978>.

¹³ Brabandere, “Propaganda.”

¹⁴ U.S. Department of Defense, “Psychological Operations,” Joint Publication 3-13.2, January 7, 2010, <https://irp.fas.org/doddir/dod/jp3-13-2.pdf>.

¹⁵ Michael N. Schmitt, ed., *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, prepared by the International Groups of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence (Cambridge University

Lastly, the term “information warfare” is often misappropriated in online discourse to garner attention. Under IHL, an action must result in physical consequences amounting to an attack for it to be classified as warfare.¹⁶ Therefore, only when information technologies deployed in a cyber operation directly or indirectly cause physical harm can such actions potentially be classified as acts of warfare.¹⁷

Russian Disinformation Campaigns

The crux of this article revolves around the dissemination of propaganda by civilians during armed conflicts. However, before delving into this subject, it is imperative to underscore the threats posed by disinformation campaigns. Given the nuanced and overlapping nature of propaganda—often blurring the lines between misinformation and disinformation—presenting diverse examples of these so-called “strategic communication techniques” remains essential. Using the Black Sea region as a focal point, the utilization of disinformation by Russia poses a significant threat to the security of Euro-Atlantic countries, with campaigns strategically designed to sow discord, incite social unrest, and deepen societal divisions, all aimed at weakening NATO Allied States.¹⁸ Additionally, Russia targets democratic institutions to discredit and undermine their legitimacy, thereby challenging the fundamental principle of freedom of expression.¹⁹ The proliferation of disinformation further exacerbates this challenge, inundating communication channels with false narratives.

An illustrative case study is Russia’s invasion of Ukraine in February 2022, during which over 1,600 disinformation messages were disseminated within two weeks in an attempt to demoralize Ukrainians and justify the illegitimate invasion.²⁰ Despite these efforts, several factors mitigated the intended impact on Ukrainian society. Initially, the Kremlin’s previous denial of invasion intentions weakened the credibility of its subsequent narratives.²¹ As a result, both Ukraine and its Western Allies were able to effectively denounce the invasion’s illegality

Press, February 2017), <https://www.cambridge.org/us/universitypress/subjects/law/humanitarian-law/tallinn-manual-20-international-law-applicable-cyber-operations-2nd-edition>, Rule 93, Para 5.

¹⁶ “Cyber Warfare,” *Online Casebook (ICRC)*, accessed February 25, 2024, https://casebook.ok.icrc.org/a_to_z/glossary/cyber-warfare.

¹⁷ “Cyber Warfare.”

¹⁸ Rodrigue Demeuse, “The Russian War on Truth: Defending Allied and Partner Democracies against the Kremlin’s Disinformation Campaigns,” General Report (NATO Parliamentary Assembly, Committee on Democracy and Security, October 2023), 1, www.nato-pa.int/document/2023-russian-war-truth-report-garriaud-maylam-014-cds.

¹⁹ Demeuse, “The Russian War on Truth.”

²⁰ Demeuse, “The Russian War on Truth,” 8.

²¹ Kateřina Fridrichová, “Mugged by Reality: Russia’s Strategic Narratives and the War in Ukraine,” *Defense & Security Analysis* 39, no. 3 (2023.): 281-95, <https://doi.org/10.180/14751798.2023.2201018>, 281.

and brutality. Moreover, Ukraine's prior exposure to Russian disinformation, particularly following the 2014 occupation of Crimea, helped build resilience through established media literacy initiatives.²²

Beyond Ukraine, Russia's disinformation campaigns extend across the Black Sea region, with notable instances in Romania and Moldova. In Romania, over 55 % of citizens were exposed to Russian disinformation in 2021, a staggering figure that underscores the pervasive influence of these campaigns.²³ In November 2022, Russia resorted to energy blackmail in Moldova, leveraging the state-owned energy corporation Gazprom to accuse Ukraine of obstructing 52.52 million cubic meters of gas supplies to Moldova.²⁴ Furthermore, the Kremlin propagated warmongering narratives regarding potential military interventions by Moldova, Ukraine, and NATO in Transnistria.²⁵

In conclusion, Russia's nefarious utilization of disinformation emerges as a formidable threat to the stability and security of targeted societies, impacting geopolitics. Despite concerted efforts, exemplified by the invasion of Ukraine in 2022, the resilience of targeted populations, coupled with international condemnation, has mitigated the intended impacts of Russian disinformation campaigns. Nevertheless, the persistent spread of false narratives underscores the ongoing need for robust media literacy initiatives and international cooperation to counteract the proliferation of disinformation in the digital age. More importantly, as we transition to the discussion on the dissemination of propaganda, the precarious nature of disinformation campaigns and the consequential threats previously emphasized highlight the pressing need for the international community to comprehensively delineate and define laws pertaining to propaganda.

Types of Propaganda

Roughly four forms exist in the realm of propaganda, each serving distinct purposes and carrying different implications.

²² Demeuse, "The Russian War on Truth," 9.

²³ INSCOP, "Chapter 4: Disinformation, Propaganda, Fake News, Trust in Information Sources," *INSCOP Research*, March 31, 2021, <https://www.inscop.ro/31-martie-2021-capitolul-4-dezinformare-propaganda-stiri-false-increderea-in-surse-de-informatii/>. – in Romanian

²⁴ EuropeLibera, "Gazprom Accuses Ukraine of Stealing Gas Destined for Moldova and Threatens to Cut Supplies," *Europa Libera (Radio Free Europe)*, November 22, 2022, <https://moldova.europalibera.org/a/gazprom-acuză-ucraina-că-fură-gazele-destinate-moldovei-și-amenință-că-va-reduce-livrările-/32142927.html>. – in Romanian

²⁵ Digital Forensic Research Lab, "Undermining Ukraine: How Russia widened its global information war in 2023," *Atlantic Council*, February 29, 2024, www.atlanticcouncil.org/in-depth-research-reports/report/undermining-ukraine-how-russia-widened-its-global-information-war-in-2023/.

Subversive propaganda aims to destabilize state institutions by influencing the nationals of another state towards insurrection, revolt, or civil strife.²⁶ The principle of sovereign equality among states, rooted in customary international law, underscores the obligation of states to refrain from interfering in the internal affairs of other states.²⁷

Defamatory propaganda constitutes verbal attacks directed at foreign states and their officials.²⁸ This form of propaganda aims to tarnish the reputation and credibility of targeted entities, often serving as a tool for diplomatic or political manipulation.²⁹

Discriminatory and hate propaganda can encompass incitement to international crimes, such as genocide and crimes against humanity. Article III of the Convention on the Prevention and Punishment of the Crime of Genocide criminalizes “direct and public incitement to commit genocide” and also condemns complicity in genocide.³⁰ Furthermore, discriminatory propaganda extends beyond incitement to genocide, addressing broader issues of racial and religious discrimination.³¹

Incitement to terrorism, which falls under the category of discriminatory and hate propaganda, is increasingly regulated by international legal instruments. For example, Article 5(2) of the Council of Europe Convention on the Prevention of Terrorism prohibits both direct incitement to commit terrorist acts and the indirect glorification of such acts, often referred to as apologies.³²

Propaganda Usage in Ukraine

Since the outset of the war in Ukraine in 2022, there has been a concerted effort to uplift morale, notably through a social media campaign featuring a video in which a voiceover states, “Courage has no recipe, except for acetone, polystyrene, gasoline, and a rag,” accompanied by imagery of a Molotov cocktail being thrown.³³ Such campaigns harbor inherent risks, particularly regarding their alignment with principles of international humanitarian law. The glorification of violence under the guise of patriotism and bravery can lead civilians to directly participate in hostilities, thereby altering their legal status to that of combatants.

²⁶ Brabandere, “Propaganda,” 509.

²⁷ Brabandere, “Propaganda.”

²⁸ Brabandere, “Propaganda,” 510.

²⁹ Brabandere, “Propaganda.”

³⁰ Brabandere, “Propaganda,” 511.

³¹ Brabandere, “Propaganda,” 512.

³² Brabandere, “Propaganda.”

³³ brave.ua, banda.agency (@brave.ua, @banda.agency), “Bravery has no recipe... Except for acetone, polystyrene, gasoline and a rag,” Instagram video, April 15, 2022, https://www.instagram.com/brave.ua/p/CcXr7q-BoEe/?img_index=1.

This pattern of encouragement by Ukrainian authorities permeates the conflict landscape, as the nation's communication strategies have evolved to prominently showcase the valor of ordinary Ukrainians engaged in acts of bravery.³⁴ However, a precarious balance exists between fostering morale and disseminating propaganda. Notably, a narrative gained traction across social media platforms in Ukraine, recounting the exploits of an unknown pilot purportedly downing Russian fighter jets over Kyiv – the legend of the “Ghost of Kyiv.”³⁵ This narrative was amplified by an official Ukrainian X (formerly Twitter) account.³⁶ However, subsequent investigations revealed that the Ghost of Kyiv was a fabrication, originating from a video game and thus entirely fictional. Ukrainian authorities acknowledged the falsehood of this narrative only after two months had passed.³⁷

The question then arises: to what extent can civilians participate in these strategic propaganda campaigns without directly engaging in hostilities?

Propaganda and International Law

The conflict in Ukraine is primarily regulated by international humanitarian law (IHL), which serves as *lex specialis* to international human rights law (IHRL). This principle dictates that IHL, also known as the Law of Armed Conflict, takes precedence in applicability due to its specificity, while IHRL assumes a secondary role.³⁸ This article will briefly examine two provisions of IHRL related to propaganda.³⁹

For this concise examination, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) serve as the two IHRL instruments under scrutiny. As a starting point, the freedom of expression encompasses, *inter alia*, the freedom of speech, freedom of the press, and freedom of information. The advantages of ensuring these freedoms include accountability, the free and safe sharing of opinions, and the promotion

³⁴ Morgan Meaker, “How Ukraine Is Winning the Propaganda War,” *Wired*, last modified June 13, 2022, <https://www.wired.com/story/ukraine-propaganda-war/>.

³⁵ Meaker, “How Ukraine Is Winning the Propaganda War.”

³⁶ “People call him the Ghost of Kyiv. And rightly so — this UAF ace dominates the skies over our capital and country, and has already become a nightmare for invading Russian aircrafts,” @Ukraine, February 27, 2022, <https://twitter.com/Ukraine/status/1497834538843660291>.

³⁷ Meaker, “How Ukraine Is Winning the Propaganda War.”

³⁸ Public International Law and Policy Group, “Lex Specialis Derogat Generali: Simultaneous (Complementary) Applicability of International Humanitarian Law and Human Rights,” *PILPG*, June 9, 2023, <https://www.publicinternationallawandpolicygroup.org/lawyer-justice-blog/2023/6/9/lex-specialis-derogat-generalis-simultaneous-complementary-applicability-of-international-humanitarian-law-and-human-rights>.

³⁹ A more thorough analysis would be beyond the scope of this article, as its focus is on the analysis of IHL.

of equality.⁴⁰ Nevertheless, various challenges arise when trying to uphold these freedoms. For instance, differing interpretations regarding the extent of these freedoms have led to fervent debates surrounding “cancel culture” and “no platforming,” which have become central issues.⁴¹ Overall, the ensuing juxtapositions create vulnerabilities in any democracy, such as susceptibility to propaganda.

Shifting the focus back to IHRL, Article 19 of the UDHR asserts, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁴² A parallel sentiment is echoed in Article 19(2) of the ICCPR.⁴³ Nevertheless, the right to freedom of opinion and expression is not absolute.⁴⁴ It may be subject to limitations in exceptional circumstances, such as when speech is used to incite violence against individuals.⁴⁵ The imposition of limitations on the right to freedom of opinion and expression remains a contentious issue. Notably, in 2022, several European nations enforced a ban on propaganda disseminated by Russian state media regarding the Ukraine conflict.⁴⁶ Consequently, RT France, a television network, sued the European Union, alleging a violation of its freedom of expression.⁴⁷ The Court of Justice of the European Union (CJEU) upheld the ban, invoking Article 20(1) of the ICCPR, which stipulates that “[a]ny propaganda for war shall be prohibited by law.”⁴⁸ However, the precise scope of this provision remains ambiguous, prompting the U.N. Special Rapporteur to advocate for a global initiative to

⁴⁰ Eleanor Brooks, “Why Is Freedom of Speech Important in a Democracy: 5 Reasons,” *Liberties*, April 1, 2022, <https://www.liberties.eu/en/stories/why-is-freedom-of-speech-important/44136>.

⁴¹ Thomas Brown, “Freedom of Speech: Challenges and the Role of Public, Private, and Civil Society Sectors in Upholding Rights,” *House of Lords Library (UK Parliament)*, December 3, 2021, <https://lordslibrary.parliament.uk/freedom-of-speech-challenges-and-the-role-of-public-private-and-civil-society-sectors-in-upholding-rights/>.

⁴² UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A, Paris, 1948, Art. 19, accessed March 3, 2024, <http://www.un.org/en/universal-declaration-human-rights/>.

⁴³ UN General Assembly, “International Covenant on Civil and Political Rights,” adopted on December 16, 1966, by General Assembly Resolution 2200A (XXI), New York City, accessed March 3, 2024, Art. 19(2), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁴⁴ “What Is Freedom of Expression?” *Article 19*, accessed March 3, 2024, <https://www.article19.org/what-is-freedom-of-expression/>.

⁴⁵ “What Is Freedom of Expression?”

⁴⁶ Laura Kayali, “RT France Challenges EU Ban before Court,” *Politico*, March 8, 2022, <https://www.politico.eu/article/rt-france-challenges-eu-ban-before-court/>.

⁴⁷ Kayali, “RT France Challenges EU Ban before Court.”

⁴⁸ UN General Assembly, “International Covenant on Civil and Political Rights,” Art. 20(1).

clarify its parameters.⁴⁹ Hence, legal ambiguities persist regarding the employment of propaganda and its exact scope in relation to IHRL. While Russia ceased to be a part of the Council of Europe in March 2022, thus no longer bound by the CJEU's ruling, current members are still obligated to adhere to the CJEU's judgments.

Overall, IHRL offers a potential solution to the violation of provisions outlining the usage of propaganda, particularly through Article 20(1) of the ICCPR and CJEU jurisprudence. The focus now shifts to IHL and its provisions, or lack thereof, regarding propaganda.

As previously stated, propaganda is not expressly prohibited under IHL. However, digital disinformation campaigns, which could be categorized as propaganda, are increasingly targeted toward civilians. The discussion herein centers on whether civilians disseminating propaganda or disinformation can be deemed as directly participating in hostilities, thereby altering their protected status from civilians to combatants.

To comprehensively elucidate these concepts, it is essential to elaborate on the principle of distinction enshrined in Article 48 of Additional Protocol I. This principle is the cardinal rule of IHL, firmly established through jurisprudence⁵⁰ and customary international humanitarian law.⁵¹ According to the principle of distinction, "Parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."⁵²

Simultaneously, the delineation of civilians and civilian objects is defined by negation, indicating what they are not. As articulated in Article 50(1) of Additional Protocol I (API), a civilian is defined as "any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3), and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt as to whether a person is a civilian, that person shall be considered to be a civilian."⁵³

Having laid down the pertinent underpinnings of IHL, attention now turns to the notion of direct participation in hostilities. This concept has evolved from the phrase "taking no active part in the hostilities," as delineated in Common Article

⁴⁹ Irene Khan, "Disinformation and Freedom of Opinion and Expression during Armed Conflicts," Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. A/77/288 (UN General Assembly, August 12, 2022), Para 105, <https://documents.un.org/doc/undoc/gen/n22/459/30/pdf/n2245930.pdf>.

⁵⁰ International Court of Justice, "Legality of the Threat or Use of Nuclear Weapons," Advisory Opinion, *ICJ Reports 1996*, 226, 257, <https://www.icj-cij.org/case/95>.

⁵¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press, 2005), 3, Rule 1, <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

⁵² ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949*, Art. 48.

⁵³ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949*, Art. 50(1).

3 of the Geneva Conventions I-IV.⁵⁴ Similar to the definition of a civilian, no concrete definition exists for direct participation in hostilities. Consequently, the International Committee of the Red Cross (ICRC) has developed the *Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*.⁵⁵ In this context, direct participation in hostilities “refers to specific hostile acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.”⁵⁶ To ascertain the applicability of this notion on a case-by-case basis, the ICRC has formulated a cumulative three-prong test.

A. *Threshold of Harm*

This threshold necessitates the fulfillment of two non-cumulative conditions. Notably, it is imperative to highlight that this threshold does not mandate the materialization of harm, but rather the probable intent of the act resulting in harm.⁵⁷ The first condition stipulates that the specific act must be “likely to adversely affect the military activities or capacity of a party to the conflict.”⁵⁸ The second condition requires the specific act to “inflict injury, death, or destruction on a person or object protected against direct attacks.”⁵⁹ Drawing from the *Tallinn Manual*, injury encompasses “severe mental suffering,”⁶⁰ as initially established in *Prosecutor v. Krstic* by the International Criminal Tribunal for the former Yugoslavia (ICTY). The Trial Chamber clarified that suffering and serious mental harm need not be “permanent and irremediable,” but must extend “beyond temporary unhappiness, embarrassment, or humiliation ... result[ing] in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”⁶¹ The dissemination of armed conflict-related media by civilian entities, such as broadcasting stations or civilians posting on social media, has been directly associated with psychological distress and post-traumatic symptoms.⁶²

⁵⁴ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949*, Art. 3.

⁵⁵ Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva, Switzerland: International Committee of the Red Cross, May 2009), <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0990.pdf>.

⁵⁶ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 45.

⁵⁷ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 47.

⁵⁸ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*.

⁵⁹ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 49.

⁶⁰ Schmitt, ed., *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Rule 30, Para 8.

⁶¹ United Nations, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (ICTY), “Prosecutor v. Radislav Krstic: Judgment,” Case No. IT-98-33-T, Trial Chamber, August 2, 2001, Para 245, <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>.

⁶² Ayelet Pe’er and Michelle Slone, “Media Exposure to Armed Conflict: Dispositional Optimism and Self-Mastery Moderate Distress and Post-Traumatic Symptoms among

Consequently, civilians disseminating propaganda may surpass the threshold of harm.

B. Direct Causation

The second condition of the three-prong test for direct participation in hostilities requires the establishment of a “direct causal link between a specific act and the harm likely to result” from an act or a military operation of which the act is an integral part.⁶³ The use of “direct” implies the existence of “indirect” participation. The latter notion broadly encompasses the general war effort (e.g., activities contributing to defeating the adversary) and sustaining war efforts (e.g., political propaganda supporting war activities).⁶⁴ While such activities may satisfy the threshold of harm, establishing direct causation becomes challenging, as the harm must be brought about by a single causal step.⁶⁵ Propaganda disseminated via social media could likely result in harm, such as severe mental suffering, without any additional steps in between. Conversely, political propaganda primarily serves to sustain war activities and is not directly causative of harm. In using political propaganda, the alleged perpetrator is merely “involved in” and “contributing to” the hostilities rather than actively and directly causing harm to the adversary.⁶⁶ Applying this second condition to the dissemination of propaganda, it becomes evident that direct causation resides in a grey area and is unlikely to be fully met.

C. Belligerent Nexus

The final condition involves the belligerent nexus, which requires that an act be “specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another.”⁶⁷ When considering the act of distributing propaganda, the belligerent nexus once again occupies a grey area. For instance, since Russia’s 2014 invasion of Crimea, Russian propaganda has portrayed Ukrainians in a derogatory light, equating Ukrainian identity traits with that of pigs.⁶⁸ These dehumanization tactics were aimed at partially justifying Russian aggression against Ukraine.⁶⁹ While this illustrates how Russia

Adolescents,” *International Journal of Environmental Research and Public Health* 19, no. 18, 11216 (September 2022), 9, <https://doi.org/10.3390/ijerph191811216>.

⁶³ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 51.

⁶⁴ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*.

⁶⁵ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 53.

⁶⁶ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949*, Commentary of 1987, Para 1944.

⁶⁷ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 58.

⁶⁸ Hybrid Warfare Analytical Group, “How Dehumanization Works in Russian Propaganda,” *Ukraine Crisis Media Center*, August 1, 2022, <https://uacrisis.org/en/degumanizatsiya>.

⁶⁹ Hybrid Warfare Analytical Group, “How Dehumanization Works in Russian Propaganda.”

mobilized national support to the detriment of Ukrainians, the question remains whether such a campaign, when disseminated by civilians, directly meets the required threshold of harm. It is likely that this would be answered in the negative.

Conclusion

In summary, the involvement of civilians in disseminating propaganda and whether such acts constitute direct participation in hostilities remains a grey area due to two primary factors. First, the lack of concrete provisions in international humanitarian law (IHL) regulating propaganda introduces ambiguity about the permissible scope of its use. Second, the three-prong test for determining direct participation in hostilities is unlikely to be fully met in such cases, which adds to the uncertainty surrounding the regulation of propaganda in armed conflict. Despite this ambiguity, the harmful consequences of both disinformation campaigns and propaganda are undeniable. These tactics foster societal discord on the one hand and intensify geopolitical tensions on the other, creating a fertile ground for challenges that could be addressed through legislative measures. The gravity of this issue demands the international community's attention, as exploiting these grey areas for political gain can no longer be considered a viable or ethical course of action.

Disclaimer

The views expressed are solely those of the author and do not represent official views of the PFP Consortium of Defense Academies and Security Studies Institutes, participating organizations, or the Consortium's editors.

About the Author

Isabel Lettner holds an LL.B. in International and European Law from The Hague University of Applied Sciences, with a specialization in International Criminal and Humanitarian Law. At the time of writing this article, she was a Research Intern at the George C. Marshall European Center for Security Studies, focusing her research on countering transnational organized crime and security issues related to the High North.

E-mail: isabel.lettner611@gmail.com

Bibliography

- “Cyber Warfare,” Online Casebook (ICRC), accessed February 25, 2024, https://casebook.icrc.org/a_to_z/glossary/cyber-warfare.
- “Powers of Persuasion,” National Archives Online Exhibits, accessed February 25, 2024, <https://www.archives.gov/exhibits/powers-of-persuasion>.
- “We Want You!” Nabb Research Center Online Exhibit, accessed February 25, 2024, <https://libapps.salisbury.edu/nabb-online/exhibits/show/propaganda/flag-waving/we-want-you->.
- Brooks, Eleanor, “Why Is Freedom of Speech Important in a Democracy: 5 Reasons,” *Liberties*, April 1, 2022, <https://www.liberties.eu/en/stories/why-is-freedom-of-speech-important/44136>.
- Brown, Thomas, “Freedom of Speech: Challenges and the Role of Public, Private, and Civil Society Sectors in Upholding Rights,” House of Lords Library (UK Parliament), December 3, 2021, <https://lordslibrary.parliament.uk/freedom-of-speech-challenges-and-the-role-of-public-private-and-civil-society-sectors-in-upholding-rights/>.
- De Brabandere, Eric, “Propaganda,” in *Max Planck Encyclopedia of Public International Law VIII*, ed. Rüdiger Wolfrum (November 2012), 507-519.
- Demeuse, Rodrigue, “The Russian War on Truth: Defending Allied and Partner Democracies against the Kremlin’s Disinformation Campaigns,” General Report (NATO Parliamentary Assembly, Committee on Democracy and Security, October 2023), <https://www.nato-pa.int/document/2023-russian-war-truth-report-garriaud-maylam-014-cds>.
- Digital Forensic Research Lab, “Undermining Ukraine: How Russia widened its global information war in 2023,” *Atlantic Council*, February 29, 2024, <https://www.atlanticcouncil.org/in-depth-research-reports/report/undermining-ukraine-how-russia-widened-its-global-information-war-in-2023/>.
- Dodge, Raymond, “The Psychology of Propaganda,” *Religious Education* 15, no. 5 (1920): 241-252, <https://doi.org/10.1080/0034408200150502>.
- EuropeLibera, “Gazprom Accuses Ukraine of Stealing Gas Destined for Moldova and Threatens to Cut Supplies,” *Europa Libera (Radio Free Europe)*, November 22, 2022, <https://moldova.europalibera.org/a/gazprom-acuză-ucraina-că-fură-gazele-destinate-moldovei-și-amenință-că-va-reduce-livrările-/32142927.html>. – in Romanian
- Fridrichová, Kateřina, “Mugged by Reality: Russia’s Strategic Narratives and the War in Ukraine,” *Defense & Security Analysis* 39, no. 3 (2023.): 281-95, <https://doi.org/10.1080/14751798.2023.2201018>, 281.
- Henckaerts, Jean-Marie, and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge University Press, 2005), 3, Rule 1, www.icrc.org/sites/

default/files/external/doc/en/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf.

Hybrid Warfare Analytical Group, "How Dehumanization Works in Russian Propaganda," Ukraine Crisis Media Center, August 1, 2022, <https://uacrisis.org/en/degumanizatsiya>.

INSCOP, "Chapter 4: Disinformation, Propaganda, Fake News, Trust in Information Sources," INSCOP Research, March 31, 2021, <https://www.inscop.ro/31-martie-2021-capitolul-4-dezinformare-propaganda-stiri-false-increderea-in-surse-de-informatii/>. – in Romanian

International Center for Not-For-Profit Law, "Legal Responses to Disinformation," ICNL, accessed February 25, 2024, <https://www.icnl.org/wp-content/uploads/2021.03-Disinformation-Policy-Prospectus-final.pdf>.

International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) [AP I]*, adopted June 8, 1977, 1125 UNTS 3, entered into force December 7, 1978, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf.

International Court of Justice, "Legality of the Threat or Use of Nuclear Weapons," Advisory Opinion, ICJ Reports 1996, 226, 257, <https://www.icj-cij.org/case/95>.

Kayali, Laura, "RT France Challenges EU Ban before Court," Politico, March 8, 2022, <https://www.politico.eu/article/rt-france-challenges-eu-ban-before-court/>.

Khan, Irene, "Disinformation and Freedom of Opinion and Expression during Armed Conflicts," Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. A/77/288 (UN General Assembly, August 12, 2022), Para 105, <https://documents.un.org/doc/undoc/gen/n22/459/30/pdf/n2245930.pdf>.

Laskin, Alexander V., "Defining Propaganda: A Psychoanalytic Perspective," *Communication and the Public* 4, no. 4 (December 2019): 305-314, <https://doi.org/10.1177/2057047319896488>.

Margolin, Leo J., *Paper Bullets: Psychological Warfare in World War II* (Barajima, Japan: Barajima Books, 2020).

Meaker, Morgan, "How Ukraine Is Winning the Propaganda War," *Wired*, last modified June 13, 2022, <https://www.wired.com/story/ukraine-propaganda-war/>.

Melzer, Nils, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva, Switzerland: International Committee of the Red Cross, May 2009), <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0990.pdf>.

Pe'er, Ayelet, and Michelle Slone, "Media Exposure to Armed Conflict: Dispositional Optimism and Self-Mastery Moderate Distress and Post-Traumatic Symptoms

among Adolescents,” *International Journal of Environmental Research and Public Health* 19, no. 18, 11216 (September 2022), <https://doi.org/10.3390/ijerph191811216>.

Public International Law and Policy Group, “Lex Specialis Derogat Generali: Simultaneous (Complementary) Applicability of International Humanitarian Law and Human Rights,” PILPG, June 9, 2023, <https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2023/6/9/lex-specialis-derogat-generalis-simultaneous-complementary-applicability-of-international-humanitarian-law-and-human-rights>.

Schmitt, Michael N., ed., *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press, 2017).

U.S. Department of Defense, “Psychological Operations,” Joint Publication 3-13.2, January 7, 2010, <https://irp.fas.org/doddir/dod/jp3-13-2.pdf>.

UN General Assembly, “International Covenant on Civil and Political Rights,” adopted on December 16, 1966, by General Assembly Resolution 2200A (XXI), New York City, Art. 19(2), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A, Paris, 1948, Art. 19, <http://www.un.org/en/universal-declaration-human-rights/>.

United Nations, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (ICTY), “Prosecutor v. Radislav Krstic: Judgment,” Case No. IT-98-33-T, Trial Chamber, August 2, 2001, Para 245, <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>.