



**Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media**

**“International law and policy on disinformation in the context of
freedom of the media”**

**Brief Paper for the Expert Meeting organized by the Office of the OSCE
Representative on Freedom of the Media on 14 May 2021**

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I. INTRODUCTION

1. On 14 May 2021, the Office of the Representative on Freedom of the Media (RFoM) organizes an expert meeting to discuss international law and policy on disinformation in the context of freedom of the media. Its aim is to serve as food-for-thought and to inspire further discussions on the matter within and among all OSCE participating States.
2. The international problem of how to counteract the dissemination of false reports and information detrimental to peace, security and co-operation has existed for a hundred years. There is a body of international law that addresses disinformation, especially in the context of the harm it has on international relations. Today, the desire to find a solution has risen in line with the growth of the media's influence, intensified by the role that social media plays in informing the public. A number of ideas are floating in intergovernmental forums, other than the OSCE, as to how to limit the harmful effects of disinformation, especially if it sows distrust among nations.
3. The prevalence of online and offline disinformation can threaten security in the OSCE region, participating States' sovereignty, political independence, territorial integrity and the security of their citizens. This paper therefore notes the larger context of the comprehensive approach of the OSCE to security, in which the protection of human rights, including freedom of expression and freedom of the media, is seen as an integral part of the OSCE's participating States' contribution to peace and security. On several occasions, the OSCE Representative on Freedom of the Media highlighted – as her predecessors did before her – that this approach, acknowledging the intertwined character of peace and security efforts in the three dimensions of the OSCE (political and military, economic and environmental policies, and the human dimension), defines the unique character of the OSCE and has been confirmed many times.
4. The current media environment and the widespread proliferation of propaganda-driven disinformation confront professional traditional media entities with numerous new challenges, and place a heavier burden on journalists and standards of journalism. By blurring the lines between false and true, disinformation undermines public trust in quality journalism and its role in a democratic society.
5. The problem of disinformation calls upon politicians, intergovernmental organizations, civil society and businesses, as major stakeholders, to address the urgent need of assessing the feasibility and effectiveness of existing measures to counteract its intentional spread, as well as their conformity to the OSCE commitments. There are many additional political challenges to designing regulation of disinformation, one of them being that some governments might exploit constraints on disinformation to curtail freedom of expression. The problem also relates to issues with the definitions related to the phenomenon, such as their vagueness.

6. The OSCE is based on the 1975 Helsinki Final Act, wherein the States voluntarily pledged “to promote, by all means which each of them considers appropriate, a climate of confidence and respect among peoples.”
7. Historically, international debate has proven that the remedy for disinformation is not to be provided by governments, while there is a need to enable the media to strive for fair reporting and the public – to appreciate media efforts to meet higher standards. The international right to seek, receive and impart information and ideas “of all kinds” by definition includes the right to any information, right or wrong. While no “ministries of truth” should be established to verify accuracy, current and past debates point to the duty of everyone, including public authorities, to facilitate dissemination of truthful information.
8. This paper takes a retrospective look at the existing international standards and intergovernmental policies. It is intended to offer guidance on the scope of circumstances, if any, in which authorities may counteract disinformation according to international law and standards. This review focuses on the legal and policy aspects of the issue, taking many sources into consideration.¹
9. The RFoM has been particularly concerned by the matter of disinformation, and engaged in many discussions and initiatives on the topic of disinformation with various stakeholders in the OSCE region. In offering its services, the RFoM emphasises its continued readiness to engage in further dialogue with the interested OSCE participating States on these issues.

¹ See, e.g., International Standards and Comparative National Approaches to Countering Disinformation in the Context of Freedom of the Media (on the request of the Russian Federation)
<https://www.osce.org/files/f/documents/2/1/424451.pdf>

II. APPLICABLE INTERNATIONAL LAW AND STANDARDS

A. General Principles

Broad scope of freedom of expression

10. Under international law, the right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”). Article 19 of the ICCPR, the key international treaty provision on freedom of expression, states:

“2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. For respect of the rights or reputations of others;
- b. For the protection of national security or of public order (ordre public), or of public health or morals.”

11. This provision is similar to provisions of regional human rights law, including notably Article 10 of the European Convention on Human Rights (ECHR), see below.

12. Article 20(2) of the ICCPR subsequently provides that propaganda for war and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”²

13. At the outset, it is important to note that the right to freedom of expression is broad in its scope encompassing “even expression that may be regarded as deeply offensive,”³ as stated by the Human Rights Committee, or ideas, information and opinions “that offend, shock or disturb the State or any part of the population”⁴ as stated by the European Court of Human Rights (ECtHR).

² <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

³ Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 12 September 2011, para 11.

⁴ *Handyside v UK*, Application No 5493/72, judgment of 7 December 1976 at para 49.

14. International human rights bodies, as well as the ECtHR, have acknowledged that human rights, particularly the right to freedom of expression, extends and applies to the online sphere.⁵
15. Under international legal standards, limitations of the right to freedom of expression are permissible but “must not put in jeopardy the right itself” and meet certain conditions, namely they must be: (1) “provided by law” which is sufficiently clear and precise; (2) pursue a legitimate aim set out in Article 19 para 3 of the ICCPR (the “rights or reputations of others” or “the protection of national security or of public order (*ordre public*), or of public health or morals”); and (3) conform to the “strict tests of necessity and proportionality”.⁶

National security and freedom of information

16. For the purposes of this paper, special attention should be given to the arguments on the need to reinforce national security through restrictions of freedom of information that are spearheaded towards disinformation. Adopted by a group of distinguished experts in international law in 1984, the *Siracusa Principles* provide useful guidance on the interpretation of the limitation of human rights as established by the ICCPR. Although an outcome of a non-governmental conference, the Siracusa Principles contain a valuable reference for public authorities as to when a restriction on freedom of expression can be said to serve the needs of national security:
 - a. “National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.
 - b. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.
 - c. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.
 - d. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing

⁵ Human Rights Council resolutions 26/13 of 26 June 2014 and 32/13 of 18 July 2016; General Assembly resolution 68/167 of 18 December 2013; Report of the Special Rapporteur on freedom of opinion and expression, 11 May 2016, A/HRC/32/38, para 6.

⁶ Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 12 September 2011, para 22.

opposition to such violation or at perpetrating repressive practices against its population.”⁷

17. In 1999, the UN Special Rapporteur on Freedom of Opinion and Expression endorsed the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* as they “give useful guidance for protecting adequately the right to freedom of opinion, expression and information.”⁸ The Johannesburg Principles state that expression may be punished as a threat to national security only if a government can demonstrate three components: the expression is intended to incite imminent violence; it is likely to incite such violence; and there is “a direct and immediate connection between the expression and the likelihood or occurrence of such violence.”⁹

⁷ Siracusa Principles on the Limitation and Derogation of Provision in the ICCPR, Annex. UN Doc E/CN.4/1984/4. Principle B (vi). <https://tinyurl.com/y8l2769e>

⁸ Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, 29 January 1999, paragraph 23. <https://bit.ly/2Kae6uc>

⁹ Johannesburg Principles on National Security, Freedom of Expression and Access to Information. Adopted on 1 October 1995. Principle 6. <http://rlibrary.umn.edu/instree/johannesburg.html#6>

B. Standards on disinformation and remedies thereof

Balance between freedom of expression and disinformation

18. Relevant UN human rights bodies have made it clear that criminalizing disinformation is inconsistent with the right to freedom of expression. For example, commenting on the domestic legal system of Cameroon, the UN Human Rights Committee (UNHRC) stated that:
 - a. “the prosecution and punishment of journalists for the crime of publication of false news merely on the grounds, without more, that the news was false, [is a] clear violation of Article 19 of the Covenant [ICCPR].”¹⁰
19. In 1998, UNHRC expressed concerns about the compatibility of the Law on the Press and Other Mass Media of the Republic of Armenia with freedom of expression under Article 19 of the Covenant, finding the notion of “untrue and unverified information” (Article 6 of the law) an unreasonable restriction on freedom of expression.¹¹ The law was repealed in 2004 and replaced with the Law on the Dissemination of Mass Information, which did not contain the objected provision.¹²
20. On another occasion, UNHRC noted that the sections of the media law dealing with false information unduly limited the exercise of freedom of opinion and expression as provided for under Article 19 of the ICCPR. In this context, UNHRC was concerned that those offences carried particularly severe penalties when criticism was directed against official bodies, as well as the army or the administration, a situation which inevitably resulted in self-censorship by the media when reporting on public affairs.¹³
21. In yet another case, UNHRC reiterated that false news provisions “unduly limit the exercise of freedom of opinion and expression.” It has taken this position even with respect to laws which only prohibit the dissemination of false news that poses a threat to public order.¹⁴
22. In 2000, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression strongly urged all governments to ensure that press offences are no

¹⁰ 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. <http://www.refworld.org/pdfid/3ae6b01014.pdf>

¹¹ Concluding Observations of the Human Rights Committee Armenia. UN Doc CCPR/C/79/Add.100, 19 November 1998, para. 20. <http://www.refworld.org/docid/3df375c24.html>.

¹² See <https://tinyurl.com/y8zycq4u>

¹³ Concluding Observations of the Human Rights Committee, Tunisia, U.N. Doc. CCPR/C/79/Add.43 (1994). <http://hrlibrary.umn.edu/hrcommittee/tunisia1994.html>

¹⁴ [19th Annual] Report of the UN Human Rights Committee. A/50/40. 3 October 1995 §89. <https://bit.ly/2ItJV46>

longer punishable by terms of imprisonment, except in cases involving racist or discriminatory comments or calls to violence. He singled out such offences as publishing or broadcasting “false” or “alarmist” information, where “prison terms are both reprehensible and out of proportion to the harm suffered by the victim <...> as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights.”¹⁵

23. Lastly, in 2017, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information issued a Joint declaration *on freedom of expression and “fake news”, disinformation and propaganda* (see reviewed below).¹⁶

International right of correction

24. In the early stages of the intergovernmental debate on the threats of disinformation, the right of correction or reply in the mass media has been raised as a very important shield and remedy from information attacks from one state against another. It has also been highlighted as a human right related to freedom of information, a spin-off of the international regulation of disinformation.
25. In the early 1950s, a French initiative led the UN General Assembly to adopt the *Convention on the International Right of Correction*,¹⁷ aimed at maintaining peace and friendly relations among nations. It considered that, “as a matter of professional ethics, all correspondents and information agencies should, in the case of news dispatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such dispatches” (both the “correspondents” and “information agencies” were broadly defined therein).
26. The Convention acknowledged the impracticality of establishing an international procedure for verifying the accuracy of media reports that might lead to the imposition of penalties for the dissemination of false or distorted reports. It prescribed, though, that if a contracting

¹⁵ UN Commission on Human Rights. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36. E/CN.4/2000/63. 18 January 2000. §205. <http://www.refworld.org/docid/3b00f3e10.html>.

¹⁶ Joint declaration on freedom of expression and “fake news”, disinformation and propaganda, 3 March 2017. See Appendix 1.

¹⁷ UN Convention on the International Right of Correction. Opened for signature on 31 March 1953. Entered into force 24 August 1962. See <https://tinyurl.com/y8ztcfa7>. The Convention has 12 signatories and 17 parties, including 6 OSCE participating States.

State's international relations or "national prestige or dignity" might suffer from false information, or be distorted by a news dispatch, it has the right to submit its version of the facts to those States from which the dispatch originated, with a copy provided to the journalist and media outlet concerned to enable a correction. Then, within five days, the recipient State is obliged to release the correction to the media operating in its territory. In case of failure to do so, the correction will be given appropriate publicity by the UN Secretary-General.

27. Nevertheless, the Convention on the International Right of Correction has rarely been enforced. Thus, experts believe that it is not clear how effectively it has served its original purpose.¹⁸ Consideration can be given to its reinvigorating.

*Joint Declaration "On freedom of expression and "fake news",
disinformation and propaganda"*

28. An important document on the issue of disinformation is the joint declaration "On freedom of expression and "fake news", disinformation and propaganda". In 2017, in the context of growing unrest about the potential impact of false information campaigns in electoral processes, the theme was chosen by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information as the topic for their 19th annual statement.

29. The free speech rapporteurs took note of the growing prevalence of disinformation and propaganda in legacy and social media, fuelled by both States and non-State actors alike, and the various harms to which they may be a contributing factor or primary cause. The rapporteurs expressed their concern that disinformation and propaganda are often designed and implemented so as to mislead a population, as well as to interfere with the public's right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds, regardless of frontiers, protected under international legal guarantees of the rights to freedom of expression and to hold opinions. They emphasised that some forms of disinformation and propaganda may harm individual reputations and privacy, or incite to violence, discrimination or hostility against identifiable groups in society.

30. They highlighted the importance of unencumbered access to a wide variety of both sources of information and ideas, along with opportunities to disseminate them. They also noted the

¹⁸ Youm, Kyu Ho. Op.cit., pp.1023-1024.

significance of having a diverse media in a democratic society, including in terms of facilitating public debates and open confrontation of ideas in society, and acting as a watchdog of government and the powerful. Moreover, they acknowledged that prohibitions on disinformation may violate international human rights standards. The 2017 Joint Declaration specifically referred to the role played by digital technologies in enabling responses to disinformation and propaganda, while also facilitating their circulation.

31. The four rapporteurs agreed therein on a number of basic principles in regards to responses to disinformation and propaganda:

1. States may impose restrictions on the right to freedom of expression only in accordance with the test for such restrictions under international law, namely that they be provided for by law, serve one of the legitimate interests recognised under international law, and be necessary and proportionate to protect that interest.
2. Such restrictions may also be imposed, as long as they are consistent with the requirements noted in paragraph (a), to prohibit advocacy of hatred that constitutes incitement to violence, discrimination or hostility (in accordance with Article 20(2) of the ICCPR).
3. The standards outlined in paragraphs (a) and (b) apply regardless of frontiers.
4. Intermediaries should never be liable for any third party content unless they specifically intervene in that content, or refuse to obey an order adopted with due process by an independent, impartial, and authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that.
5. Consideration should be given to protecting individuals against liability for merely redistributing or promoting content of which they are not the author and which they have not modified.
6. State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified if provided in line with the requirements noted in paragraph (a) and if there are no less intrusive alternative measures which would protect the interest and respect minimum due process guarantees.
7. Content filtering systems if imposed by a government and not end-user controlled are not justifiable.
8. The right to freedom of expression applies “regardless of frontiers” and the jamming of signals from a broadcaster based in another jurisdiction, or the withdrawal of rebroadcasting rights in relation to that broadcaster’s programmes, is legitimate only where the content disseminated by that broadcaster has been held by an oversight body described in (d) to be in serious

and persistent breach of a legitimate restriction on content (i.e. one that meets the conditions of paragraph (a)) and other means of addressing the problem have proven to be ineffective.

32. Specific standards on acting on disinformation, suggested in the Joint Declaration, included a call to abolish general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, *as incompatible with international standards for restrictions on freedom of expression*. They also called on State actors not to make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda). Moreover, State actors should, in accordance with their domestic and international legal obligations and their public duties, take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment.
33. A positive obligation to promote media diversity was put forward in the Joint Declaration as a key means of addressing disinformation and propaganda. That would include providing support for the production of diverse, quality media content; prohibiting undue concentration of media ownership; and rules requiring media outlets to be transparent about their ownership structures.
34. With regards to the regulation of broadcasting, governments were called in the Joint Declaration to adhere to a clear regulatory framework overseen by a body immune to political and commercial interference or pressure and serving a free, independent and diverse media audiovisual sector. Another element in this context is the presence of strong, independent and sustainable public service media with a clear mandate and high standards of journalism.
35. The Joint Declaration further urged governments taking measures to promote media and digital literacy, such as engagement with civil society to raise awareness about problematic issues. They should also consider other measures to promote equality, non-discrimination, intercultural understanding and other democratic values, including with a view to addressing the negative effects of disinformation and propaganda.
36. Specific recommendations for journalists and media outlets in the Joint Declaration included support of effective systems of media self-regulation based on standards on striving for accuracy in the news, including by offering a right of correction and/or reply to address inaccurate media reports. They were called to consider including critical coverage of disinformation and propaganda as part of their news services, particularly during elections and regarding debates on matters of public interest.

C. Regional Instruments

European Union

37. The European Parliament (EP), in its landmark 2016 resolution on EU strategic communication to counteract propaganda, laid certain policy foundations for both anti-EU propaganda and disinformation in legacy and social media. The link between *propaganda* and *disinformation* was seen therein in the following way:
- a. “propaganda against the EU comes in many different forms and uses various tools... with the goal of distorting truths, provoking doubt, dividing Member States, engineering a strategic split between the European Union and its North American partners and paralysing the decision-making process, discrediting the EU institutions and transatlantic partnerships... in the eyes and minds of EU citizens and of citizens of neighbouring countries, and undermining and eroding the European narrative based on democratic values, human rights and the rule of law.”¹⁹
38. The link between propaganda and disinformation is seen also in the thesis that the former can only be fought by rebutting the latter, and by making use of positive messaging and information.²⁰
39. The Resolution made a further distinction between *criticism*, on the one hand, and *propaganda or disinformation*, on the other, by pointing to “the context of political expression, instances of manipulation or support linked to third countries and intended to fuel or exacerbate this criticism”. Under the circumstances, such narratives should provide grounds to question the reliability of disseminated messages.²¹
40. The Resolution described the current situation as growing, systematic pressure on Europeans to tackle information, disinformation and misinformation campaigns and propaganda from countries and non-state actors (such as transnational terrorist and criminal organisations) in their neighbourhood. These campaigns are intended to undermine the very notion of objective information or ethical journalism, casting all information as biased or as an instrument of political power, and to also target democratic values and interests. The EP found that targeted information warfare, once extensively used during the Cold War, has returned as an integral part of modern hybrid warfare, defined as “a combination of military and non-military

¹⁹ European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)). Para 1. <https://tinyurl.com/ydyfy89k>

²⁰ Ibid., Para 46.

²¹ Ibid., Para 40.

measures of a covert and overt nature, deployed to destabilise the political, economic and social situation of a country under attack, without a formal declaration of war.”²²

41. Therefore, the EP encouraged legal initiatives and a “truly effective strategy” be established at the international and national levels to provide more accountability when dealing with disinformation. These legal efforts should also provide and ensure a framework for quality journalism and a variety of information, by combating media concentrations which have a negative impact on media pluralism.²³

42. Among other initiatives, the Resolution also called on European States to develop media literacy and quality journalism education, and to strengthen the role model of public service media, among other initiatives.

43. Countering disinformation may not be enough. The EEAS of the EU noted that:

“Unfortunately, experience tells us that when a fake news [story] is out, it is already too late [to counter it]. Reacting is very important, but it is even more crucial to make sure that the real news reaches the broadest possible audience, both inside and outside our Union. So our first duty is to talk about what we are doing, to explain with the maximum of transparency our policies, spread the real stories about the positive impact that our European action has on the lives of so many people.”²⁴

44. Following the work of the *High Level Expert Group on Fake News and Online*

Disinformation in early 2018, the European Commission came up with a Communication to the EP and the Council titled “Tackling online disinformation: a European Approach”. In its own words, the Communication “presents a comprehensive approach” aimed at responding to this phenomenon in the digital world by promoting transparency and prioritising “high-quality information, empowering citizens against disinformation, and protecting” democracies and policy-making processes in the EU.²⁵

45. In December 2018, the European Commission and High Representative of the Union for Foreign Affairs and Security Policy forwarded to the European Parliament, the European

²² Ibid., Para D.

²³ Ibid., Paras 35, 46, 48.

²⁴ Speech by the High Representative / Vice-President Federica Mogherini at the conference “Hybrid threats and the EU: State of play and future progress”, 2 October 2017. [The](#) “broadest possible audience” of fake news websites was proven to have, at least in France and Italy, on average, a monthly reach of some 3.5% in 2017, with most reaching less than 1% of the online population in both countries. Conversely, the most popular news websites in France and Italy had an average monthly reach of 22.3% and 50.9%, respectively. See also Fletcher, Richard, Alessio Cornia, Lucas Graves, and Rasmus Kleis Nielsen “Measuring the reach of “fake news” and online disinformation in Europe”. Factsheet, February 2018, p.1. Reuters Institute for the Study of Journalism at the University of Oxford. <https://bit.ly/2J3UnvH>

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Tackling online disinformation: a European Approach”. COM/2018/236 final. 26 April 2018. <https://bit.ly/2rz2WrW>

Council, the Council, the European Economic and Social Committee and the Committee of the Regions a Joint Communication “Action Plan against Disinformation.”²⁶

46. The Action Plan provides a definition of disinformation, not dissimilar from the one above, saying:

Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm includes threats to democratic processes as well as to public goods such as Union citizens’ health, environment or security.

47. Disinformation does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary.

48. The 2018 Action Plan is based on the following four pillars:

- improving the capabilities of Union institutions to detect, analyse and expose disinformation;
- strengthening coordinated and joint responses to disinformation (incl. establishing a rapid alert system);
- mobilising private sector to tackle disinformation (incl. through the Code of Practice on Disinformation);
- raising awareness and improving societal resilience.

49. The Code of Practice on Disinformation²⁷ was signed by the online platforms Facebook, Google and Twitter, Mozilla, Microsoft, TikTok as well as by advertisers and parts of the advertising industry. Assessments of the Code of Practice on Disinformation show that it has proven a very valuable instrument, and has provided a framework for a structured dialogue between relevant stakeholders – the first one of its kind worldwide - to ensure greater transparency and accountability of platforms’ policies on disinformation, most recently – disinformation around the COVID-19.²⁸

50. The debate within the EU on false news is very much focussed on the issue of liability of internet intermediaries for dissemination of provocative information. A starting point was the 2000 EU Directive on electronic commerce.²⁹ This firmly stated, in its Section 4, that the

²⁶ Action Plan against Disinformation, Brussels, 5.12.2018 JOIN(2018) 36 final.

https://eeas.europa.eu/headquarters/headquarters-homepage/54866/action-plan-against-disinformation_en

²⁷ Code of Practice on Disinformation, 2018. <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

²⁸ Ibid.

²⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). Section 4: Liability of intermediary service providers: <https://tinyurl.com/jwwnwx8>, In the U.S., the law that protects “interactive computer service providers” from liability for the content they carry if it is not produced directly by them is Section 230 of the 1996 Communications Decency Act (47 U.S.C. § 230).

“information society service providers” were not liable for mere conduit, caching, or hosting, nor were they obliged to monitor the information they transmitted or stored, in particular with the aim of actively seeking facts or circumstances indicating illegal activity. These rules apply only under certain conditions of non-interference and passive provision of information society services (Art. 12). Such information society services provide a wide range of economic activities which take place online, such as those offering online information or commercial communications, or those providing tools allowing for search, access and retrieval of data. They also include services consisting of the transmission of information via a communication network, in providing access to a communication network or in hosting information provided by a recipient of the service.³⁰

51. The above provisions of the Directive do not affect the possibility for a court or administrative authority, in accordance with the EU member States’ national legal systems, of requiring the service provider to terminate or prevent an infringement, or establishing a system for removal or disabling of access to illegal information (Art. 14). National law may indeed establish obligations for the providers to promptly inform the competent public authorities of alleged illegal activities undertaken, or information provided by recipients of their service or to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service (Art. 15).
52. Draft *Digital Services Act* now under discussion in the EU, significantly improves the mechanisms for the removal of illegal content and for the effective protection of users’ fundamental rights online, including the freedom of speech. It also creates a stronger public oversight of online platforms, in particular for platforms that reach more than 10% of the EU’s population.³¹
53. This means concretely:
 - measures to counter illegal content online, such as a mechanism for users to flag such content and for platforms to cooperate with “trusted flaggers”,
 - effective safeguards for users, including the possibility to challenge platforms’ content moderation decisions,
 - transparency measures for online platforms on a variety of issues, including on the algorithms used for recommendations,
 - access for researchers to key data of the largest platforms, in order to understand how online risks evolve oversight structure to address the complexity of the online space,

³⁰ Television and radio broadcasting are not information society services as they are not provided at individual request. By contrast, services which are transmitted point to point, such as video-on-demand or the provision of commercial communications by email are information society services. The use of email or similar individual communications for instance by natural persons acting outside their trade, business or profession is neither an information society service.

³¹ See <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

- (for very large platforms) enhanced supervision and enforcement by the Commission.
54. Of importance here is the 2008 Council of the EU *Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law*. It prescribes each EU member State take the necessary measures to ensure that certain *intentional* conduct is punishable. Such conduct includes publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. The Framework Decision also calls to punish publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity, crimes against peace and war crimes (as defined in the Statute of the International Criminal Court and the Charter of the International Military Tribunal), if directed against same types of a group of persons or a member of such a group when the conduct is carried out in a manner likely to incite to violence or hatred against them.
55. The Framework Decision expects that the EU member states will take measures consistent with fundamental principles relating to “freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability”.³²

Council of Europe

56. Article 10 (“Freedom of expression”) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, or ECHR) reads as follows:

- “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

³² Council of European Union Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. <https://tinyurl.com/j4vq667>

health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”³³

57. The European Court of Human Rights, which is mandated to interpret the ECHR, was very precise when it stated that: “Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention.”³⁴ In the Court’s view, Article 10 applies not only to the content of information, but also to the means of transmission or reception, since any restriction imposed on the means necessarily interferes with the right to receive and impart information.³⁵
58. At the same time, the rules of broadcasting in Europe are more strict and specific in addressing the issue of media content. The *European Convention on Transfrontier Television* envisions that broadcasters “shall ensure that news fairly presents facts and events and encourages the free formation of opinions.”³⁶
59. The issue of disinformation was a subject of Resolution 2143 (2017) of the Parliamentary Assembly of the Council of Europe (PACE) “Online media and journalism: challenges and accountability”.³⁷ The Resolution referred to an undefined line “between what could be considered a legitimate expression of personal views in an attempt to persuade readers and disinformation or manipulation.” It noted with concern the growing number of online media campaigns designed to misguide sectors of the public, through intentionally biased or false information, hate campaigns against individuals and personal attacks, often in a political context, aimed at harming democratic political processes.³⁸
60. The Resolution suggested a number of steps be taken by national authorities, such as inclusion of media literacy in the school curricula, support to awareness-raising projects and targeted training programmes to promote the critical use of online media, and support for professional journalistic training.³⁹

³³ Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4.XI.1950

<https://bit.ly/1foTq0D>

³⁴ *Salov v. Ukraine*, 65518/01, Judgment, 06/09/2005 para 113. <http://hudoc.echr.coe.int/eng?i=001-70096>

³⁵ *Autronic AG v. Switzerland*. Application No 12726/87. Judgment of 22 May 1990.

<https://bit.ly/2KR0T1a>

³⁶ European Convention on Transfrontier Television. Strasbourg, 5.V.1989. Art. 7 para 3.

<https://bit.ly/2rzG6Of>

³⁷ Parliamentary Assembly of the Council of Europe. Resolution 2143 (2017) Online media and journalism: challenges and accountability. Text adopted on 25 January 2017. <https://tinyurl.com/ydxzsc8k>

³⁸ *Ibid.* Para 6.

³⁹ *Ibid.* Para 12.1.

61. In another of its previous resolutions, PACE, while acknowledging that the internet “belongs to everyone; therefore, it belongs to no one and has no borders” and that there is a need to preserve its openness and neutrality, noted that the internet also “intensifies the risk of biased information and manipulation of opinion.” As such, it “must not be allowed to become a gigantic prying mechanism, operating beyond all democratic control” or “a *de facto* no-go area, a sphere dominated by hidden powers in which no responsibility can be clearly assigned to anyone.”⁴⁰ The Parliamentary Assembly recommended to the member States of the Council of Europe (CoE) to consider actions that would prevent the risk of information distortion and manipulation of public opinion, mostly through coherent regulations and/or incentives for self-regulation concerning the accountability of the internet operators.⁴¹
62. In October 2017, the CoE published a report titled “Information Disorder: Toward an interdisciplinary framework for research and policy making.”⁴² The document examines the way in which disinformation campaigns have become widespread and, heavily relying on social media, contribute to a global media environment of information disorder. The authors advocate for definitional rigour, rejecting the term “fake news” as inadequate to describe the complex phenomena at stake.
63. The report provides a new framework for policy-makers, legislators, researchers, technologists and practitioners working on the theoretical and practical challenges related to:
- a. misinformation, when false information is shared, but no harm is meant;
 - b. disinformation, when false information is knowingly shared to cause harm; and
 - c. malinformation, when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere — the three elements of information disorder.
64. “The complexity and scale of information pollution in our digitally-connected and increasingly polarised world”, says the report, “presents an unprecedented challenge.” It examines solutions that have been rolled out by the social media networks and considers ideas for strengthening existing media, news literacy projects and regulation. The authors claim that, while they deem fact-checking and debunking initiatives admirable — an appendix to the report lists such actions in Europe, there is an immediate need to understand the most effective formats for sparking curiosity and scepticism in audiences, about the information they consume and the sources from which that information stems.

⁴⁰ PACE. Resolution 1970 (2014) Internet and politics: the impact of new information and communication technology on democracy. Text adopted 29 January 2014. Paras 12, 14 <https://bit.ly/2qEvqze>

⁴¹ Ibid. Para 19.9.

⁴² Information Disorder: Toward an interdisciplinary framework for research and policymaking. By Claire Wardle and Hossein Derakhshan. Published by the Council of Europe, October, 2017. <https://bit.ly/2jNx3Yg>

65. There is a need to work collaboratively on workable solutions, and the report provides a framework for the different stakeholders. In particular, the national governments are advised to commission research to map information disorder; draft regulations to prevent any advertising from appearing on disinformation sites; require transparency around Facebook ads; support public service media organisations and local news outlets; roll out advanced cybersecurity training; and enforce minimum levels of public service news on to the platforms.⁴³

European Court of Human Rights

66. The overall bulk of the case law of the European Court of Human Rights (ECtHR) related to dissemination of false information is about the restrictions or penalties imposed by the national authorities for the protection of the reputation or – to a lesser degree – the right to respect for private and family life.
67. The domestic laws of member States of the CoE, meanwhile, generally say that defamatory accusations should be factually false, or ungrounded, in order to be found liable by a court. A defamatory statement may be declared null and void if the defendant fails to prove its truthfulness. In order for defamation to constitute a violation of law, it is generally imperative that the information be false, i.e. untrue. Moreover, a remedy may only be used when the allegedly defamatory statement consists of facts, since the truthfulness of value judgments is not susceptible of proof. If a statement is found to be defamatory, the person who made it may be ordered to pay compensation to the aggrieved party.
68. The relevant case law of the ECtHR reveals numerous complaints on a possible violation by the restrictions or penalties of the applicant’s right to freedom of expression (under the above-cited Article 10 of the ECHR). In particular, it evaluates if the interference with the right to freedom of expression was indeed prescribed by law and was necessary in a democratic society, pursued a legitimate aim and was proportionate to it. The case law usually takes into account the role of the press in a democratic society, public interest factors, and possible status of the defamed person as a public figure whose limits of acceptable criticism are wider than those of private individuals. In addition, the ECtHR is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.⁴⁴ Subject to paragraph 2 of Article 10, freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as

⁴³ Op.cit., p. 8.

⁴⁴ See *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38.

- a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness which constitute a “democratic society”.⁴⁵
69. The ECtHR has repeatedly noted that the safeguards afforded by Article 10 to journalists, in relation to their factual reporting on issues of general interest, is subject to the proviso that they are acting in *good faith*, in order to provide *accurate and reliable information* in accordance with the *ethics of journalism*, that includes an ordinary obligation to verify factual statements.⁴⁶ For example, in the *Goodwin* case, the ECtHR noted that the central rationale for the shielding of journalists’ confidential sources was to strengthen “the vital public-watchdog role” of the media and not to adversely affect its ability “to provide accurate and reliable information.”⁴⁷
70. Despite the dominance of defamation and privacy case law, there are several judgments of the ECtHR that relate to the topic of this paper, by evaluating false statements in a political speech unrelated to reputation or private life.
71. For example, a decision on admissibility of an application to the ECtHR (*Bader v. Austria*⁴⁸) addresses a claim by the applicant, an Austrian professor, that the public broadcaster ORF disseminated biased information on the need for the country’s EU accession which was incompatible with its obligation of objectivity under the national Broadcasting Act. The applicant therefore requested to annul the results of the EU accession referendum held earlier in the same year.
72. However, the European Commission of Human Rights (which until 1998 served as a buffer between applicants and the ECtHR) found that the applicant was not actually affected by the claimed violation of his right to information, and had formed his opinion on the referendum’s purpose irrespective of the possible bias in ORF. It noted that the right to freedom to receive information “basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him.” The European Commission of Human Rights concluded that Article 10 of the ECHR did not, in general, embody an obligation on Governments to impart information to the individual. The Commission could not find grounds for the allegation that any alleged insufficiency of information provided by the Austrian authorities, in relation to the above referendum, prevented the applicant from the effective exercise of his own right to freedom of thought. Thus the application was found inadmissible.

⁴⁵ See *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, pp. 23-24, § 31 and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II.

⁴⁶ See the *Goodwin* judgment, p. 500, § 39, *Fressoz and Roire*, § 54, and *Bladet Tromsø and Stensaas*, § 65.

⁴⁷ *Goodwin v. the United Kingdom*, § 39. Judgment no. 17488/90, 27 March 1996. <https://bit.ly/2KROYCO>

⁴⁸ *Bader v. Austria*, Application No. 26633/95. Decision on admissibility, 15 May 1996. <https://bit.ly/2G3H0t1>

73. In a judgment on the 2008 case of *Balsytė-Lideikienė v. Lithuania*,⁴⁹ the ECtHR reviewed an application of the editor and publisher of “Lithuanian Calendar – 2000”. Here the applicant complained that her right to free expression was violated by the national authorities seizing and destroying a calendar she had published and subsequently banning its further distribution. The seizure of the calendar copies occurred after the national authorities (a parliamentary committee and the office of the Prime Minister) requested an investigation into possible violation of the national law through the calendar’s distribution in bookstores. A particular reason was that the back cover of “Lithuanian calendar 2000” contained a map of the Republic of Lithuania, falsely depicting the neighbouring territories of the Republic of Poland, the Russian Federation and the Republic of Belarus as “ethnic Lithuanian lands under temporary occupation”. Moreover, the Foreign Ministry of Lithuania received diplomatic notes from the Russian Embassy and the Embassy of Belarus. Interestingly enough, the national courts found neither calls for violence, nor expressions of hatred against the ethnic groups or the superiority of the Lithuanians over other nationals in the calendar, while the negative statements about the Jewish population were not found to be anti-Semitic. However, the courts highlighted that the publication had caused negative reactions from parts of society as well as some foreign embassies. Furthermore, the appellate instance attested that the comments in the calendar were based on the ideology of extreme nationalism, which rejected the idea of civil society’s integration and endorsed xenophobia, national hatred and territorial claims. It emphasised, however, that the breach of the administrative law committed by the applicant was not serious, and that it had not caused significant harm to society’s interests. Therefore, it affirmed an imposition on the applicant of an administrative warning and the confiscation of the publication.
74. In the ECtHR, the Lithuanian Government argued that, by withdrawing the publication from distribution and imposing an administrative warning on the applicant, the authorities had sought to prevent the spreading of ideas which might violate the rights of ethnic minorities living in the country, as well as endanger Lithuania’s relations with its neighbours.
75. In its judgment the ECtHR had particular regard to the general situation of the Republic of Lithuania. It took into account the Government’s explanation as to the context of the case that, after the re-establishment of the independence of Lithuania in 1990, the questions of territorial integrity and national minorities were sensitive. The ECtHR also noted that the publication received negative reactions from the diplomatic representations of the Republic of Poland, the Russian Federation and the Republic of Belarus. As to the language of the publication, it held that the applicant “expressed aggressive nationalism and ethnocentrism”

⁴⁹ *Balsytė-Lideikienė v. Lithuania*, Application No. 72596/01, 4 November 2008. <https://bit.ly/2wtV0x5>

thereby “giving the Lithuanian authorities cause for serious concern.” The ECtHR thus found no breach of Article 10 of the ECHR.

76. In another case (*M .S. and P.S. v. Switzerland*), the applicants, employees of the Soviet Novosti Press Agency (NPA)⁵⁰ bureau in Switzerland, complained of being victims of the decision by the nation’s collective executive head of government and state, the Federal Council, to shut down their employer. The decision was made in 1983 on the constitutional provision that entitled the expulsion of foreigners who constitute a danger to the security of the state. This decision was based on the conclusions of a police report and conclusions of the Federal Attorney-General, all classified confidential. The police report’s conclusions allegedly demonstrated that, from the beginning, the NPA bureau in Bern was not about providing information but “operated as a centre of disinformation, subversion and agitation.” The conclusions also stated:

“The activities engaged in to influence the political decision-making process in our country clearly constitute an interference in Swiss internal affairs. They violate Swiss sovereignty and compromise our relations with other countries.”

77. The ECtHR noted that the closing of the NPA was not intended to punish the applicants but to prevent certain activities. In dismissing the application, it said the shut-down “might possibly be an infringement of the fundamental rights of the agency but not those of the applicants.”⁵¹
78. Five years later, in yet another case against Switzerland a violation of Article 10 was indeed found. It started with the national regulator’s ban of particular satellite dishes enabling customers to watch Soviet TV. Before the ECtHR, the Swiss Government argued that a total ban on unauthorised reception of transmissions from telecommunications satellites was the only way of ensuring “the secrecy of international correspondence”, because there was no means of distinguishing signals conveying such correspondence from signals intended for the general use of the public. The authorities’ submission was found by the ECtHR to be “unpersuasive”, since there was no risk of obtaining secret information by means of dish aerials receiving broadcasts from satellites. The State’s interference with the right to receive information from abroad was not found necessary in a democratic society. Moreover, the ECtHR judgment said the interference could only happen on the basis of paragraph 2 of the ECHR’s Article 10. The concurring opinion of Judge De Meyer stated in particular: “The freedom to see and watch and to hear and listen is not, as such, subject to States’ authority.”⁵²

⁵⁰ Predecessor to the current information agency called Rossiya Segodnya (or, in English, Russia Today):

<https://bit.ly/2HIdUSW>

⁵¹ *M .S. and P.S. v. Switzerland*. Application No 10628/83, Decision of 14 October 1985 on the admissibility of the application. <https://bit.ly/2rzAK7p>.

⁵² *Autronic AG v. Switzerland*. Application No 12726/87. Judgment of 22 May 1990. <https://bit.ly/2KR0T1a>

79. It should also be noted that the ECtHR generally found inadmissible all applications for violation of Article 10 related to genocide denials, on the grounds that such speech not only goes against facts established by international tribunals, but also violates Article 17

(“Prohibition of abuse of rights”) of the ECHR, worded as follows:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

80. Article 17 (above) empowers the ECtHR to affirm any activity against the human rights specified in it (such as right to life and non-discrimination) as activity that may not rely on the protection of the ECHR in general, including Article 10 on freedom of expression.

81. Thus, the ECtHR places the criteria for limitation of speech not so much on the falsity or truthfulness of information, but rather on other criteria, such as the harm that it has or has not caused.

III. PRINCIPLES DEVELOPED BY INTERNATIONAL NGOs

82. A number of international media freedom non-governmental organizations (NGOs) and professional media associations spoke in a consistent way on the issue of legal regulation of false information.⁵³ A most systematic approach seems to be the one submitted by the UK-based Media Legal Defence Initiative,⁵⁴ an NGO providing legal defence to independent media, journalists and bloggers who are under threat for their reporting.⁵⁵
83. The concise arguments of the international media freedom NGO may be summarised and commented as follows:
84. Legal bans on false news can have a serious chilling effect on the work of reporters. In situations of rapidly developing news, or where different sources contradict each other, facts may be difficult to check. Given that reporters' reputations depend on the quality of the information they provide, they naturally have a strong incentive only to share news which they are fairly confident is correct, and to warn their audience if a certain fact cannot be verified. If, however, journalists have the sword of a general legal ban of disinformation hanging over their head, they might simply decide, for fear of breaking the law, to report only the news that they are completely certain of. This will happen on the background of the growing number of attempts to discard from the law a most important privilege of journalists – to keep secret their confidential sources. As a result journalists seeking to prove the truth of their statements beyond doubt may frequently be unable to do so.⁵⁶ Consequently, citizens will be deprived of potentially vital information on current developments.
85. While the law might sometimes demand separation of potentially accurate facts and free opinions this is not always easily done. In many cases, opinions are expressed through sarcastic, satirical, hyperbolic or comical statements that are false on face value. In defamation lawsuits, the court usually takes the genre and context into account but if there is a general prohibition of false news it can easily become a ban on opinions. That will endanger the free confrontation between different points of view that lies at the heart of democracy.

⁵³ See, e.g., Reporters Without Borders “Predators of press freedom use fake news as a censorship tool”. 16 March 2017. <https://tinyurl.com/yd8qn9kw>; FreedomHouse. Freedom on the Net 2017: Manipulating Social Media to Undermine Democracy. <https://freedomhouse.org/report/freedom-net/freedom-net-2017>

⁵⁴ <https://www.mediadefence.org/>

⁵⁵ Stephens, Mark, et. al. “In the Case of *Dareskizb Ltd v Armenia*”. Application No. 61737/08. A Submission to the European Court of Human Rights on behalf of the Media Legal Defence Initiative. 15 March 2012, paras 13-27. <https://tinyurl.com/y99tysnw>

⁵⁶ In this case, it is interesting to look at the norm of the Russian Mass Media Law which requires that journalist checks the “reliability” of information that he/she disseminates, and not “truth beyond doubt.” This provision was likely caused by the fact that the press does not have either status or instruments to prove facts beyond doubt.

86. False news legal provisions will fail to recognise that it is often far from being self-evident what the ‘truth’ on a particular matter is. Any such provisions will be almost by definition impermissibly vague, they are bound to fail the criteria of legal certainty and predictability that characterize the rule of law. Moreover, with very few exceptions, even if a particular truth is well established, it may not always remain that way.
87. Fact and truth are not easily separated either. There is truthful reporting of the facts, say someone’s account of the events, and there is reporting true account of the facts, by providing a holistic set of accounts on the story and discounting reporter’s possible personal biases. The latter approach serves as a goal for the media, but is too often hard to achieve.
88. The public authorities generally have sufficient possibilities and power, including easy access to the private and public media, to enable them to refute false statements. This leading position which the governments occupy in the information market makes it necessary for them to display restraint in resorting to administrative or criminal legal instruments, where other means are available for replying to falsities.
89. Even if it could be said that under certain circumstances, the publication of false news of a specific kind may give rise to a risk of public disorder, such cases are likely to be extremely rare and cannot alone constitute sufficient justification for a general prohibition of disinformation. Undoubtedly, truthful news of a specific kind under certain circumstances may also give rise to a risk of public disorder but that characteristic alone does not and may not foresee a hypothetical ban on “true news.”
90. Furthermore, according to the international media freedom NGOs, whilst the publication of false news may be viewed as potentially detrimental to the public good, its restriction involves far greater risks because it undermines democracy itself. This is particularly true where the nation’s institutions, in particular the judicial system, civil society, and a robust and independent media, remain fragile. Media Legal Defence Initiative notes that there are obvious dangers in placing prior restraints on free speech and that this alone requires them to be subject to concerned scrutiny.
91. The Camden Principles on Freedom of Expression and Equality, prepared by ARTICLE 19, another media freedom NGO,⁵⁷ on the basis of discussions held with high-level international officials, civil society and academics represent an interpretation of international law and standards. Out of the 12 principles, one (principle 7) endorses to the right of correction and reply (see above), best protected through self-regulatory systems:

⁵⁷ See: <https://www.article19.org>

“The right of reply gives any person the right to have a mass media outlet disseminate his or her response where the publication or broadcast by that media outlet of incorrect or misleading facts has infringed a recognised right of that person, and where a correction cannot reasonably be expected to redress the wrong.”⁵⁸

92. To sum up, there are a number of ideas floating in intergovernmental fora as to how to limit the effects of disinformation detrimental to global peace, security and co-operation. The debate traditionally points to governments’ responsibility to refrain from sponsoring, encouraging, producing, endorsing or disseminating false information, especially if it sows distrust among nations.

⁵⁸ The Camden Principles on Freedom of Expression and Equality, 2009, – p. 7. <https://bit.ly/1XfMDrL>