

Resolution 2217 (2018)¹

Legal challenges related to hybrid war and human rights obligations

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2133 \(2016\)](#) on legal remedies to human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities and [Resolution 2132 \(2016\)](#) on the political consequences of the Russian aggression in Ukraine and its [Resolution 2198 \(2018\)](#) and [Recommendation 2119 \(2018\)](#) on the humanitarian consequences of the war in Ukraine concerning the military operations in this country. It also recalls its [Resolution 2190 \(2017\)](#) on prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh.
2. The Assembly refers to its previous texts regarding cybercrime, including [Recommendation 2077 \(2015\)](#) on increasing co-operation against cyberterrorism and other large-scale attacks on the Internet, [Resolution 1986 \(2014\)](#) on improving user protection and security in cyberspace and [Resolution 1565 \(2007\)](#) “How to prevent cybercrime against State institutions in member and observer States?”. The policy guidelines contained therein are relevant as important instruments for preventing the consequences of hybrid war.
3. The Assembly notes with concern that, today, States are more and more often confronted with the phenomenon of “hybrid war”, which poses a new type of threat consisting of a combination of military and non-military techniques such as cyberattacks; mass disinformation campaigns, including fake news, in particular via social media; interference in election processes; disruption of communications and other networks; and many others. Cyberattacks are particularly dangerous as they can hit a country’s strategic infrastructure, such as its energy supply, the air traffic control system or nuclear plants. Hybrid war can therefore destabilise and undermine entire societies and cause numerous casualties. The increasingly widespread use of these new tactics, especially when combined, raises concerns about the adequacy of existing legal norms.
4. The Assembly also expresses deep concern regarding numerous cases of mass disinformation campaigns intended to undermine security, public order and peaceful democratic processes. There is a vital need to develop tools to protect democracy from “information weapons”, while preserving freedom of expression and freedom of the media in the country under attack.
5. The Assembly notes that there is no universally agreed definition of “hybrid war” and there is no “law of hybrid war”. However, it is commonly agreed that the main feature of this phenomenon is “legal asymmetry”, as hybrid adversaries, as a rule, deny their responsibility for hybrid operations and try to escape the legal consequences of their actions. They exploit lacunae in the law and the complexity of legal systems, operate across legal boundaries and in under-regulated spaces, exploit legal thresholds, are prepared to commit substantial violations of the law and generate confusion and ambiguity to mask their actions.
6. Despite the complexity of hybrid war, the Assembly stresses that hybrid adversaries do not operate in a legal vacuum and that relevant domestic and international legal norms, including international human rights law, apply to their actions, although the question of attribution, and hence the accountability of those

1. *Assembly debate* on 26 April 2018 (17th Sitting) (see [Doc. 14523](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Boriss Cilevičs; and [Doc. 14536](#), opinion of the Committee on Culture, Science, Education and Media, rapporteur: Mr Volodymyr Arieu). *Text adopted by the Assembly* on 26 April 2018 (17th Sitting).

See also [Recommendation 2130 \(2018\)](#).



responsible, may raise difficulties. If, in the context of hybrid war, a State resorts to the use of force against another State, the latter State is allowed to invoke the right to self-defence on the basis of Article 51 of the Charter of the United Nations and norms of international humanitarian law will apply. However, in practice, hybrid adversaries avoid manifest use of force that would reach the required threshold for triggering application of the above norms, thereby creating a legal grey area.

7. The Assembly notes that in cases in which a hybrid adversary refrains from the use of military means, its actions should be examined in the light of domestic criminal law and, if necessary and depending on the situation, relevant international legal instruments covering specific policy areas (such as the law of the sea or norms on combating cybercrime, terrorism, hate speech or money laundering).

8. The Assembly recalls that when countering hybrid war, States are bound to respect human rights law. It is concerned that certain member States of the Council of Europe have already taken measures (such as criminal convictions for online statements, surveillance measures, blocking websites or expulsions of foreigners) which raise questions concerning the respect for human rights, such as the right to freedom of expression, including the right to information, the right to respect for one's privacy or the right to freedom of movement.

9. The Assembly also recalls that although Article 15 of the European Convention on Human Rights (ETS No. 5, "the Convention") allows States parties to derogate from certain obligations "in time of war or other public emergency threatening the life of the nation", any derogation from the rights enshrined therein shall be made according to certain substantive and procedural requirements. When countering hybrid war threats, States Parties to the Convention may also invoke national security as a legitimate aim to limit certain rights: the right to respect for private and family life (Article 8), freedom of expression (Article 10), freedom of assembly and association (Article 11), freedom of movement (Article 2.3 of Protocol No. 4 to the Convention (ETS No. 46)) and procedural safeguards in case of the expulsion of aliens (Article 1.2 of Protocol No. 7 to the Convention (ETS No. 117)). Any restriction of the above rights must be "prescribed by law", "necessary in a democratic society" and proportionate. States' experience in counterterrorism efforts may be a useful source of guidance when identifying the limitations imposed by international law on measures to counter hybrid war threats.

10. Therefore, the Assembly calls on member States to:

10.1. refrain from resorting to hybrid war in international relations and fully respect the provisions of international law, in particular the principles of sovereignty, territorial integrity and inviolability of frontiers, in accordance with their object and purpose, by not abusively exploiting perceived loopholes or ambiguities;

10.2. step up international co-operation in order to identify hybrid adversaries and all types of hybrid war threats, and to establish an applicable legal framework;

10.3. maintain exchanges of information regarding hybrid aggressions in Europe and share experience and good practice in countering hybrid threats;

10.4. take measures to increase the public's awareness of hybrid war threats and its ability to react speedily to such threats;

10.5. implement the Convention on Cybercrime (ETS No. 185), sign and ratify it where this is not already the case, and promote its ratification by non-member States.

11. The Assembly welcomes the measures taken by the European Union and the North Atlantic Treaty Organization (NATO) to counter hybrid war threats and to establish co-operation in this field. It also calls on all Council of Europe member States which are members of the European Union and NATO to share their best practices on countering hybrid war with other member States that may be affected by this phenomenon.

12. As regards measures aimed at countering hybrid war, the Assembly recalls its [Resolution 1840 \(2011\)](#) on human rights and the fight against terrorism. It calls on member States to ensure that such measures respect the requirements stemming from the European Convention on Human Rights, in line with the case law of the European Court of Human Rights. In particular, as regards rights that are subject to restrictions under the Convention, any limitation must be based on law, proportionate to the legitimate aim pursued (for example national security) and "necessary in a democratic society".