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Legal challenges related to hybrid war and human rights obligations

Reply to Recommendation[1]: Recommendation 2130 (2018)
Committee of Ministers

1. The Committee of Ministers has carefully examined Recommendation 2130 (2018) "Legal challenges related to hybrid war and human rights obligations". It has forwarded it to the Steering Committee for Human Rights (CDDH), the Counter-Terrorism Committee (CDCT), the Cybercrime Convention (TC-Y), the Committee of Legal Advisers on Public International Law (CAHDI) and the Steering Committee on Media and Information Society (CDMSI), for information and any comments.

2. The Committee of Ministers shares the Parliamentary Assembly's concern about the phenomenon of "hybrid war" with which more and more States are confronted. Cyberattacks, mass disinformation campaigns, interference in electoral processes, disruption of communications and other networks, combined with military means, constitute a new form of threat that is particularly dangerous to the stability and security of our States. The Committee of Ministers agrees with the Assembly that, despite the difficulty of addressing this phenomenon from a legal point of view, hybrid opponents do not operate in a legal vacuum. Indeed, the relevant national and international legal regimes apply to the military and non-military means of "hybrid war". Consequently, international humanitarian law applies if an action constitutes an armed conflict, international or not. Similarly, international human rights law applies both to military and non-military actions in the context of "hybrid war", including, where relevant, the case law of the European Court of Human Rights on restrictions to human rights.

3. With regard to the Convention on Cybercrime (paragraphs 2.5 and 2.6 of the Recommendation), the Committee of Ministers stresses that it remains the only legally binding international instrument in this field. Fully aware that the fight against cybercrime requires the widest possible international co-operation, the Committee of Ministers generally responds favourably to requests for accession to this Convention submitted to it by non-member States of the Council of Europe. Of the 61 Parties to the Convention at present, 18 are non-member States of the Council of Europe. The Committee of Ministers also considers that appropriate monitoring of compliance with the provisions of the Convention is carried out on a regular basis by the Convention Committee (T-CY), which brings together all the Parties to the Convention.

4. With regard to mass disinformation campaigns, the Committee of Ministers draws the Assembly's attention to the 2017 report entitled "Information Disorder: Toward an interdisciplinary framework for research and policy making", written at the request of the CDMSI. This report provides an in-depth analysis and description of the different forms of information disorder (covering "mis-information", "dis-information" and "mal-information") and their use of social media platforms. The report evokes their impact on democratic processes and explores possible multidisciplinary solutions, including the strengthening of existing media, news literacy education projects and regulation. In this regard, it is widely acknowledged that the phenomenon of information disorder requires intervention on the part of States.

1. Adopted at the 1332nd meeting of the Ministers' Deputies (12 December 2018).

5. It also requires vigilance on the part of internet intermediaries when such intentionally false information is disseminated online. On 7 March 2018, the Committee of Ministers adopted Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, which sets out the conditions for restricting access to illegal content online, as determined by either national laws or judicial authorities, or by their own content-restriction policies or codes of ethics.

6. The Committee of Ministers would also like to warn of the risk of a violation of Article 10 of the European Convention on Human Rights (freedom of expression) when measures are taken to tackle intentionally false messages whose content is not illegal. In these cases, fact-checking methods to identify and neutralise these messages, coupled with the availability of quality journalism and an aware and responsive public, can effectively counter the lies and propaganda spread in cyberspace. The Council of Europe therefore supports initiatives aimed at developing users' fact-checking capabilities so that they can flag possible false information. In addition, the Organisation promotes digital citizenship education and media and news literacy programmes for all age groups. Furthermore, the Committee of Ministers wishes to inform the Assembly that a standard-setting instrument to promote a favourable environment for quality journalism is currently being drafted, in accordance with the terms of reference it has given to the CDMSI for the period 2018-2019.

7. With regard to electoral processes, the Committee of Ministers refers to its Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns. This recommendation contains guidelines for media coverage of election campaigns in full respect of Article 10 of the European Convention on Human Rights. However, the Committee of Ministers is aware that, faced with the changing media landscape, and in particular the arrival of social media, existing electoral campaign regulations must be adapted to this new environment. A 2017 Council of Europe study on "the use of internet in election campaigns" concluded that current regulations cannot ensure a level playing field between all political stakeholders nor fully ensure the integrity, fairness and legitimacy of the electoral process. This study identifies a number of areas where problems have emerged as a result of the digitalisation of electoral campaigning and recommends that the regulations in this area be updated. The CDMSI has accordingly informed the Committee of Ministers of its support for a revision of Recommendation CM/Rec(2007)15 to include social media platforms, as recommended by the Assembly (paragraph 2.2 of the Recommendation).

8. In conclusion, the Committee of Ministers takes note of the Assembly's proposal to give thought to a new convention on the non-military aspects of "hybrid war" (paragraph 2.1 of the Recommendation) but considers, in view of the existing legal framework and the work in progress in the relevant committees, that it would be premature at this stage to draw up such a text. On the other hand, it agrees that it would be appropriate to revise its Recommendation CM/Rec(2007)15 to include social media platforms and instructs its Steering Committee on Media and Information Society to put forward proposals in this regard.