



**Doc. 14523 – Compendium of written amendments**  
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**(Revised version)**

## **Legal challenges related to hybrid war and human rights obligations**

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## A. Draft Resolution

1. The Parliamentary Assembly recalls 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 conflict 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 Ukraine. It also recalls its Resolution 2190 (2016) on prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh.
2. 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 based on a combination of military and non-military means such as cyberattacks, mass disinformation campaigns, including fake news, in particular via social media, 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 air traffic control system or nuclear plants. Therefore, hybrid war can destabilise and undermine entire societies and cause numerous casualties. The increasingly widespread use of these new tactics, especially in combination, raises concerns about the adequacy of existing legal norms.

### Amendment 3

#### **Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, after paragraph 1, insert the following paragraph:*

*"The Assembly recalls 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) on how to prevent cybercrime against state institutions in member and observer States? The policy guidelines contained therein are relevant as important instruments for the prevention of hybrid war consequences."*

### Amendment 5

#### **Tabled by Mr Oleksii GONCHARENKO, Mr Andrii LOPUSHANSKYI, Mr Serhii KIRAL, Ms Olena SOTNYK, Mr Leonid YEMETS, Mr Boryslav BEREZA, Mr Serhii SOBOLIEV, Mr Viktor VOVK, Mr Sergiy VLASENKO, Mr Kostiantyn USOV, Mr Vladyslav GOLUB**

*In the draft resolution, paragraph 2, first sentence, after the words "in particular via social media," insert the following words: "interference in election processes,".*

### Amendment 1

#### **Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, paragraph 2, second sentence, after the words "a country's strategic infrastructure, such as", insert the following words: "energy supply,".*

### Amendment 2

#### **Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, after paragraph 2, insert the following paragraph:*

*"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."*

3. 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 lacunas in the law and legal complexity, 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.
4. 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 law norms, including international human rights law, apply to their actions, although the question of attribution and hence accountability may raise difficulties. If, in the framework 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.
5. 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).
6. 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) which raise questions concerning 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 freedom of movement.
7. 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 shall be "prescribed by law", "necessary in a democratic society" and proportionate. Experience gained by States in counterterrorism activity may be a useful source of guidance when identifying the limitations imposed by international law on measures to counter hybrid war threats.

8. Therefore, the Assembly calls on member States to:
- 8.1. refrain from resorting to hybrid war in international relations and fully respect the provisions of international law, in accordance with their object and purpose, by not abusively exploiting perceived loopholes or ambiguities;
- 8.2. step up international co-operation in order to identify hybrid war adversaries and all types of hybrid war threats, as well as to establish the applicable legal framework;
- 8.3. take measures to increase the public's awareness of hybrid war threats and its ability to react speedily to such threats;
- 8.4. implement the Council of Europe 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.
9. 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

**Amendment 6**

**Tabled by Mr Oleksii GONCHARENKO, Mr Andrii LOPUSHANSKYI, Mr Serhii KIRAL, Ms Olena SOTNYK, Mr Leonid YEMETS, Mr Boryslav BEREZA, Mr Serhii SOBOLEEV, Mr Viktor VOVK, Mr Sergiy VLASENKO, Mr Kostiantyn USOV, Mr Vladyslav GOLUB**

*In the draft resolution, paragraph 8.1, after the words "fully respect the provisions of international law,", insert the following words: "in particular sovereignty, territorial integrity and inviolability of frontiers,".*

**Sub-amendment 1 to amendment 6**

**Tabled by the Committee on Legal Affairs and Human Rights**

*In amendment 6, after the words "in particular", insert the following words: "the principles of".*

**Amendment 4**

**Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, after paragraph 8.2, insert the following paragraph:*

*"maintain exchange of information regarding hybrid aggressions in Europe and share experience and good practice in countering hybrid threats;".*

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.

10. 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 interpretation given by 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”.

## B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2018) on legal challenges related to hybrid war and human rights obligations.
2. The Assembly recommends that the Committee of Ministers:
  - 2.1. conduct a study on hybrid war threats, with a special focus on non-military means, in order to identify legal gaps and develop appropriate legal standards, including considering a new Council of Europe convention on this subject;

### **Amendment 7**

**Tabled by Mr Oleksii GONCHARENKO, Mr Serhii KIRAL, Ms Olena SOTNYK, Mr Leonid YEMETS, Mr Boryslav BEREZA, Mr Serhii SOBOLIEV, Mr Viktor VOVK, Mr Sergiy VLASENKO, Mr Kostiantyn USOV, Mr Vladyslav GOLUB**

*In the draft recommendation, paragraph 2.1, after the words "in order" insert the following words: "to identify key vulnerabilities and specific hybrid-related indicators, potentially affecting national and European structures and networks and".*

### **Sub-amendment 1 to amendment 7**

**Tabled by the Committee on Legal Affairs and Human Rights**

*In amendment 7, replace the word "structures" with the word "infrastructures".*

- 2.2. develop principles for regulatory reform of social media platforms to ensure transparency in the conduct of free and fair elections;

### **Amendment 8**

**Tabled by Mr Oleksii GONCHARENKO, Mr Andrii LOPUSHANSKYI, Mr Serhii KIRAL, Ms Olena SOTNYK, Mr Leonid YEMETS, Mr Boryslav BEREZA, Mr Serhii SOBOLIEV, Mr Viktor VOVK, Mr Sergiy VLASENKO, Mr Kostiantyn USOV, Mr Vladyslav GOLUB**

*In the draft recommendation, at the end of paragraph 2.2, insert the following words: "and to prevent their use for hybrid war purposes".*

### **Amendment 9**

**Tabled by Mr Oleksii GONCHARENKO, Mr Andrii LOPUSHANSKYI, Mr Serhii KIRAL, Ms Olena SOTNYK, Mr Leonid YEMETS, Mr Boryslav BEREZA, Mr Serhii SOBOLIEV, Mr Viktor VOVK, Mr Sergiy VLASENKO, Mr Kostiantyn USOV, Mr Vladyslav GOLUB**

*In the draft recommendation, after paragraph 2.2, insert the following paragraph:*

*"address the issue of countering external interference in national election processes by the hybrid warfare toolbox;"*

- 2.3. examine State practice in countering hybrid war threats, with a view to identifying legal standards and good

practice and ensuring compliance of this practice with the safeguards provided for by the European Convention on Human Rights (ETS No. 5);

- 2.4. step up co-operation with other international organisations working in this field, in particular the European Union and the North Atlantic Treaty Organisation (NATO);
- 2.5. promote the ratification by member and non-member States of the Convention on Cybercrime (ETS No. 185);
- 2.6. examine ways in which the Convention on Cybercrime is implemented by its States Parties and initiate a reflection on whether it could be improved.