



Doc. 14536
24 April 2018

Legal challenges related to hybrid war and human rights obligations

Committee Opinion¹

Committee on Culture, Science, Education and Media

Rapporteur: Mr Volodymyr ARIEV, Ukraine, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Culture, Science, Education and Media welcomes the report by Mr Boriss Cilevičs (Latvia, SOC) on behalf of the Committee on Legal Affairs and Human Rights and its draft resolution and draft recommendation. It shares the main thrust of the report and considers that the issue regarding hybrid war and human rights obligations has become topical and challenging in recent years, in particular given the rapid technological developments and legal lacunas and complexity related to this phenomenon.

2. The report highlights that hybrid adversaries operate across legal boundaries and under-regulated spaces, exploit legal thresholds limiting responses and are prepared to commit substantial violations of the law under cover of legal and factual ambiguity. They deny their hybrid operations in order to create a legal “grey zone” within which they can operate freely. The legal regulation of hybrid warfare is a challenge, because one of the parties is deliberately seeking to evade its legal responsibilities. In the absence of strict internationally recognised limitations on the use of the wide range of hybrid means of waging conflict, domestic criminal law measures attempt to tackle these latest threats. Some of the domestic measures taken in response to hybrid threats may in turn violate fundamental rights.

3. The report rightly points out that human rights concerns related to combating hybrid threats may be tackled following the approach applied to counterterrorism measures. States’ responses to hybrid threats should be lawful and proportionate. As regards freedom of expression, some restrictions aimed at controlling the content of news may be imposed, notably to combat hate speech. However, as the report rightly states, these restrictions should not be discriminatory or lead to general censorship. Particularly challenging is the fact that it is not always possible to identify the hybrid adversary and to attribute responsibility for hybrid threats to a specific country. Moreover, phenomena such as disinformation campaigns may also imply a conflict between certain human rights and fundamental freedoms.

4. Hybrid threats and certain measures taken in response pose a danger to fundamental rights, but the current legal “grey area” surrounding these new threats also undermines legal co-operation based on mutual trust and common understanding of applicable rules. This is why the committee fully agrees that in complex responses to hybrid threats, including legal, counter-intelligence, diplomatic and military means, the Council of Europe has to be relevant and play a prominent role supporting the design of common legal responses and contributing its rich human rights expertise.

5. The committee endorses the proposed draft resolution, but would suggest a few changes to strengthen the text.

1. Reference to committee: [Doc. 14044](#) and [Doc. 14048](#), Reference 4217 of 20 June 2016. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 14523](#). Opinion approved by the committee on 24 April 2018.



B. Proposed amendments

Amendment A (to 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 \(2007\)](#) “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 B (to the draft resolution)

In the second sentence of paragraph 2, after the words “a country’s strategic infrastructure, such as”, add the words “energy supply,”.

Amendment C (to 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.”

Amendment D (to 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;”

C. Explanatory memorandum by Mr Volodymyr Arieu, rapporteur for opinion

1. General remarks

1. The report drafted by Mr Boriss Cilevičs on behalf of the Committee on Legal Affairs and Human is well documented and coherent in its explanations. However, I would like to make a few additional clarifications and some brief comments.

2. Paragraph 5 of the explanatory memorandum refers to a verbal confrontation between Western and Russian security experts regarding reciprocal “hybrid threats”, giving the impression that there is a kind of balance between the Russian Federation’s actions and the West’s actions. I do not believe this was the intention of the rapporteur and would like to stress that we cannot compare, for example, actions undertaken to achieve independence by ex-Soviet countries, which entailed the emergence of new democratic States, on the one hand, and the Russian intervention in Ukraine, leading to armed conflict in this country and to heavy humanitarian consequences, on the other.

3. In paragraph 7 of the explanatory memorandum, reference is made to the aim of the “information war”, which is to win over the population. I would add here another very important category of audience, notably the decision-makers, who are a decisive factor for an appropriate response to a hybrid warfare attack, as in the case of the annexation of Crimea by Russia. The disinformation campaign about “no Russian troops in Crimea” probably did not intend to deceive the masses in the West; it was most definitely aimed at delaying and slowing the decision-making process of the European political leaders.

4. In the same paragraph 7, reference is made to interferences by Russia in the electoral process in the United States, Germany, France and some countries in the Balkan region. I would add that, according to various sources, as from 2004, Russia interfered in at least 27 European and North American countries, including cyberattacks and disinformation campaigns.

5. Paragraph 8 rightly states that the lack of accountability and attribution online is indeed an obstacle to identifying the source of the disinformation. At the same time, I would note that if the information is accurate and legal, it does not matter if the source is domestic or foreign. A distinction should be made between the two problems. As an example, Latvia and Lithuania were temporarily banning Russian television channels not because they were Russian, but because they were undermining statehood, or the territorial integrity of Ukraine, or spreading hatred. Many of these channels also spread false alarm messages, like “your government/Western elites/Brussels and Washington are secretly planning terror attacks”, or “they are organising a migration crisis in order to substitute the white population with Muslims”.

6. In the same paragraph 8, reference is made to the Russian “troll factories” and to the fact that it is difficult to distinguish where the line is between online activists’ free speech and State interference. However, there are a number of indicators suggesting that the Internet Research Agency based in Saint-Petersburg (also known as Trolls from Olgino or Kremlbots) is controlled by the Russian intelligence services, and that it has employed fake accounts registered on major social networks, discussion boards or online newspaper sites to promote the Kremlin’s interests in domestic and foreign policy, including Ukraine, as well as attempting to influence the 2016 United States presidential election.

7. To conclude, I fully agree with the rapporteur that in complex responses to hybrid threats the Council of Europe should play a prominent role in designing legal responses and contributing its rich human rights expertise. I feel that the amendments proposed would further strengthen the draft resolution. The following sub-section briefly provides the rationale of the proposals.

2. Rationale of the proposed amendments to the draft resolution

Amendment A

It seems appropriate to recall in the draft resolution previous reports of the Assembly regarding co-operation against cyberterrorism, security in cyberspace and prevention of cybercrime. The policy guidelines contained therein are to me most relevant in the present context.

Amendment B

Although paragraph 2 does not intend to give an exhaustive list of elements describing “hybrid war”, it seems important to explicitly mention threats to energy supply, to complete the picture.

Amendment C

In recent years, mass disinformation campaigns have become more frequent, intense and dangerous. I believe it is necessary that the Assembly expresses its deep concern about the matter and calls on States to develop tools to protect democracy from “information weapons”.

Amendment D

Maintaining exchange of information and sharing experience and good practice in countering hybrid threats is essential, so it would be important to have an explicit call in this direction in the draft resolution.