United Nations: Joint declaration on freedom of expression and “fake News”, disinformation, and propaganda

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On 3 March 2017, a joint declaration on freedom of expression and “fake news”, disinformation, and propaganda was adopted by the four special mandates for protecting freedom of expression (the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the Organization of American States 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), with assistance of ARTICLE 19 and the Centre for Law and Democracy (CLD).

The declaration starts by taking note of and expressing concern at the increase of disinformation and propaganda in legacy and social media around the world, fuelled by both state and non-state actors. This kind of content, according to the special mandates, is designed to mislead a population and affect the public’s right to know and individuals’ rights to freedom of expression and to hold opinions.

The special mandates express alarm over actions by public authorities that undermine the role of journalists as public watchdogs, such as denigrating, intimidating, and threatening media by referring to them as ‘members of the opposition’, to be lying, or having a hidden political agenda.

The special mandates also deplore actions taken by governments against dissent and controlling public communication, such as: repressive rules regarding the establishment or operation of media; interference in operations by, among others, denying accreditation and prosecution based on political motives; laws restricting dissemination of content; states of emergency arbitrarily established; technical controls like the blocking, filtering, jamming, or closing down of digital spaces; and pressuring intermediaries to restrict content.

Notably, it refers to specific principles related to online content, such as that intermediaries should not be held liable for third party content related to their services unless they specifically intervene in that content or refuse to obey an order. Moreover, the blocking of entire websites, IP addresses, ports, or network protocols are considered to be extreme measures that can only be applied under the same conditions that are applied for justifying the restriction of freedom of

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expression.

When referring to the standards on disinformation and propaganda, the declaration states that general prohibitions on dissemination of information that comes from vague and ambiguous ideas are incompatible with the international guarantees for freedom of expression. Moreover, the declaration provides that criminal defamation laws should be abolished for being unduly restrictive.

Regarding the positive obligation of states to promote an enabling environment for freedom of expression, the declaration refers to the need to establish clear regulatory frameworks for broadcasters; ensure the presence of strong, independent and adequately resourced public service media; encourage measures to promote media diversity; promote media and digital literacy; and promote equality, non-discrimination, intercultural understanding, and other democratic values. Finally, the declaration gives a relevant value to the role of intermediaries and their responsibility to respect human rights. When addressing this issue, the declaration establishes that, when intermediaries intend to restrict third party content beyond their legal obligation, they must comply with basic standards, such as, among others: adopting clear, predetermined policies that are both easily accessed and understood by users; respecting minimum due process guarantees.

Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe 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, Joint declaration on freedom of expression and "fake news", disinformation and propaganda, 3 March 2017

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