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# Propaganda, Information War and the Estonian-Russian Treaty Relations: Some Aspects of International Law\*

## 1. Introduction

Observation of the Estonian and international mass media reveals that propaganda issues became especially sensitive in the relations between Estonia and Russia in the first months of 2007, and tempestuous in April and May of the same year, when a memorial dating back to the Soviet occupation, known as the Bronze Soldier, was removed from Tõnismägi, Tallinn. The events came to be known as the Bronze Night after the ravages in Tallinn and East-Viru County over two nights, which occurred as a result of the (at that time still only planned) removal of the monument. Dmitry Rogozin, a former member of the Russian State *Duma*, who has served as an Ambassador of the Russian Federation to NATO since autumn 2007, declared to the news agency Rosbalt on 19 April 2007, i.e. before the displacement of the memorial, that Russia should use force: “I think that **desecration of the eternal peace of the tomb is a basis for war**. [...] An armed operation by a special unit would be a nice response to the provocative behaviour of fascists [author’s highlight — A.S.]”<sup>1</sup> Because of attacks on computer networks at that time, which the Estonian Ministry of Foreign Affairs considered a new chapter in the history of cyber conflicts, the Estonian press as well as statesmen and civil servants began to refer to the event as an **information war between Estonia and Russia** [author’s highlight — A.S.]<sup>2</sup> Is the claim that the propaganda became so exceptionally severe in 2008 true? In reality, wars of words have occurred quite often between our two countries. Instead, it is those moments when propaganda has not caught the attention of the public that should be considered exceptional. It turns out that historically, propaganda has affected the legal relations between Estonia and Russia. This article poses the question whether and to what extent the legal relations between Estonia and Russia have been affected by propaganda and whether this has had a wider effect on international law. In this article, I will examine the historical background of Estonian–Russian international legal relations in order to clarify the situation that had developed by 2007.

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\* This article represents the personal views of the author.

<sup>1</sup> Rogozin: Rossiyskiy spetsnaz dolzhen vyzvolit prakh voynov v Talline. – Informatsionnoe agentstvo Rosbalt, 19.04.2007. Available at <http://www.rosbalt.ru/2007/04/19/293822.html> (27.04.2008).

<sup>2</sup> See. L. Anton, M. Pulliainen, et al. Cyber attacks hit Estonia. – Glance at the Mirror 2007. Estonian Ministry of Foreign Affairs, Tallinn 2008, p. 58. Available at [http://web-static.vm.ee/static/failid/115/cyber\\_attacks.pdf](http://web-static.vm.ee/static/failid/115/cyber_attacks.pdf) (1.05.2008).

## 2. Clarification of Some Terms

Before turning to the actual research question and subject matter of the article, let us first clarify some basic concepts and notions. It must be emphasised that I will be discussing concepts that are often not regarded as primarily legal concepts — even if they have, as in the Estonian–Russian historical context, a legal dimension. Propaganda has a historical background in the relations between Estonia and Russia. Before explaining how, let us take a closer look at the notion itself. It is a historical fact that the **notion of propaganda** came to be used at the beginning of the 17<sup>th</sup> century, when in 1622 Pope Gregory XV founded an organisation, intended for Roman Catholic missionaries, called *Sacre Congregatio De Propaganda Fide*.<sup>3</sup> Philip M. Taylor, Professor of International Communication of the University of Leeds, has expressed the opinion that in Protestant societies, the word is still perceived as unpleasant because of its historical background.<sup>4</sup> Encyclopædia Britannica defines propaganda as follows: dissemination of information — facts, arguments, rumours, half-truths, or lies — to influence public opinion.<sup>5</sup> According to Soviet ideology, propaganda was meant for shaping a certain world view among the public, while so-called Western propaganda was meant to tie the public to the prevailing ideology, theory and information by the ruling class.<sup>6</sup> When looking at the ideology and acts of present-day Russia, we may say that some things have changed. The distinction between the so-called capitalist and Soviet propaganda has disappeared and the existing definition is a mix of both ideologies.<sup>7</sup>

Propaganda is perhaps the best-known notion, yet it is only one of the tools in communication between countries, which is aimed at imposing one's will on the other party to achieve political, military or social goals; such a set of measures may also be referred to as **subversive leverage**.<sup>8</sup> When it comes to furnishing the notion of propaganda (as part of psychological war) with content and its analysis in international law, subversive leverage is usually seen as a whole set. An information war is a considerably wider domain than simply propaganda.<sup>9</sup> Ingrid Detter Frankopan, Professor of International Law, has in her work defined four types of war and identified the subcategories of each type. This typology does not include information war.<sup>10</sup> When clarifying the legal problems at the core of this article, we cannot overlook the notions of Russian special services. In the USSR, subversive leverage was defined as **active measures**, i.e. operational activities of intelligence and counter-intelligence services, aimed at affecting the political activities of the target country, to take over initiative from the other party by using deception and undermining the enemy positions as well as by altering their plans in a manner that was necessary for achieving the foreign policy goals of the country taking measures of subversive leverage.<sup>11</sup> The article that describes the subversive leverage of Russia and the former Soviet Union contains a presentation made by the United States Information Agency (hereinafter: USIA) to the US House of Representatives in June 1992, which gives an overview of active measures. It is a Soviet term that refers to the use of manipulative techniques in the dissemination of information, including the selective use of slogans (a memorable political or commercial text that had military origins!<sup>12</sup>), disinformation and true information in substantiating their positions by persons who directly or indirectly wish to affect the positions and decision-making process of persons who have a decisive impact on the public of the country of location and thus also on the policy-making of the country.<sup>13</sup> The three main methods of subversive leverage are explained, which are called **white or grey or black**, respectively, according to the peculiarities of the tools and tactics used.<sup>14</sup> White or public measures are seen to include the information management of the public

<sup>3</sup> L. J. Martin. *International Propaganda. Its Legal and Diplomatic Control*. Gloucester: Peter Smith 1969, p. 5.

<sup>4</sup> P. M. Taylor. *Munitions of the Mind. A History of propaganda from the ancient world to the present era*. Manchester, New York: Manchester University Press 2006, p. 3.

<sup>5</sup> See the definition of the term 'propaganda' in Britannica Online: Manipulation of information to influence public opinion. Available at <http://www.britannica.com/ebc/article-9375985> (27.04.2008).

<sup>6</sup> *Sovetskiy Entsiklopeditseskiy Slovar'*. IV izdanie. Moskva 1989, p. 1080.

<sup>7</sup> *Tolkovyy slovar' russkogo yazyka kontsa XX v. Sankt Peterburg*: Folio-Press 1998, p. 516.

<sup>8</sup> Estonia has also used a long and ambiguous definition such as 'operation of active measures of foreign intelligence'. See Security Police of the Republic of Estonia. *Annual Review 2001, 2002*, pp. 18–20; Security Police of the Republic of Estonia. *Annual Review 2006*. Tallinn 2007, pp. 8–12 (the notion of information war has been used) pp. 32–36.

<sup>9</sup> Ch. C. Joyner, C. Lotrionte. *Information Warfare as International Coercion: Elements of a Legal Framework*. – *European Journal of International Law* 2001 (12) 5, pp. 826–827.

<sup>10</sup> I. Detter. *The Law of War*. Cambridge: Cambridge University Press 2000, pp. 38–58.

<sup>11</sup> *Kontrrazvedyvatelnyy slovar'*. Moskva 1972, pp. 161–162. See for comments and English translation: V. Mitrokhin. *KGB Lexicon. The Soviet intelligence Officer's Handbook*. London: Frank Cass 2002, p. 13 – intelligence methods, p. 251 – counter-intelligence methods.

<sup>12</sup> See the definition of the word 'slogan' at Dictionary.com: Slogan means a war cry or gathering cry, as formerly used among the Scottish clans. See <http://dictionary.reference.com/browse/slogan> (27.04.2008).

<sup>13</sup> *Soviet Active Measures in the "Post-Cold War" Era 1988–1991. A Report Prepared at the Request of the United States House of Representatives Committee on Appropriations by June 1992 by the United States Information Agency, June 1992*. Available at [http://intellit.muskingum.edu/russia\\_folder/pcw\\_era/exec\\_sum.htm](http://intellit.muskingum.edu/russia_folder/pcw_era/exec_sum.htm) (27.04.2008).

<sup>14</sup> *Ibid.*, see chapters "Executive Summary" and "The Role of Active Measures in Soviet Foreign Policy". Available at [http://intellit.muskingum.edu/russia\\_folder/pcw\\_era/exec\\_sum.htm](http://intellit.muskingum.edu/russia_folder/pcw_era/exec_sum.htm) (1.12.2008).

press and information services, both in their home country and through the information activities of embassies located abroad.<sup>\*15</sup> Grey or semi-public measures are seen as activities in which movement of information is administered through non-profit organisations and political parties, and subversive leverage.<sup>\*16</sup> Black or covert measures are regarded as undercover working of special service officials in news agencies.<sup>\*17</sup> It should also be noted that the USIA agency was established during the Cold War, in order to withstand Soviet Union propaganda.<sup>\*18</sup> In the United Kingdom and US, the notion of **covert action** is used instead of subversive leverage, but in a slightly narrower sense than in the case of the active measures of the former Soviet Union.<sup>\*19</sup>

## 3. Two Significant Treaties between Estonia and Russia

### 3.1. Peace Treaty of 1920

Clause 5 of Article VII of the Tartu Peace Treaty, entered into between the Republic of Estonia and the Russian Soviet Federative Socialist Republic on 2 February 1920, (hereinafter: Estonian–Russian Peace Treaty) provided: “Not to authorise the formation or presence in their territory of any organisation or groups whatsoever, which claim to govern the whole or part of the territory of the other Contracting Party, or the presence of representatives or officials of organisations and groups, whose object it is to overthrow the Government of the other party to the Treaty.”<sup>\*20</sup> This article prohibits the activities of organisations whose success inevitably and most directly depends on propaganda as it is impossible to achieve a change in state power without the involvement of a sufficient number of people. Furthermore in order to involve people, it is necessary to incite them to act. Propaganda is generally used to affect people to involve them in some sort of activity. L.J. Martin cited the Tartu Peace Treaty, entered into between Estonia and Russia in 1920, as an example of prohibition of propaganda in international law.<sup>\*21</sup> Below, I will examine some arguments presented by individuals participating in the conclusion of the Estonian–Russian Peace Treaty in 1920, as well as by their contemporaries, which indicates the importance of the role played by propaganda in signing the Treaty.

#### 3.1.1. Arguments by the Russian party

A book on the Tartu Peace Treaty, published during the Soviet occupation, gave the following overview of the Russian positions for concluding the peace treaty: “At that stage of the negotiations, the Russian delegation mainly emphasised guarantees of actual security, which had to preclude the possibility that the Estonian territory could be used as a military platform against Soviet Russia, as it had happened in 1919. Already at the opening session of the conference, L. Karassin had emphasized: Without a certain guarantee that the peace will not transform simply into a military manoeuvre that is used to better prepare for a new bloodshed, we will not sign the treaty.”<sup>\*22</sup> The author of that monograph has worded the introduction to the chapter as “the principal position of the Soviet party” and noted that the draft Peace Treaty contained a clause that prohibited “the presence in the territory of any organisations or groups which claimed to govern the whole or part of the territory of Russia within the limits of Estonia as well as recruiting and mobilisation to the armies, organisations and groups of any other countries fighting against Soviet Russia.”<sup>\*23</sup> Clause 5 of Article VII

<sup>15</sup> *Ibid.*, see chapter “‘White’ or overt active measures”. Available at [http://intellit.muskingum.edu/russia\\_folder/pcw\\_era/sect\\_03.htm#White](http://intellit.muskingum.edu/russia_folder/pcw_era/sect_03.htm#White) (1.12.2008).

<sup>16</sup> *Ibid.*, see chapter “‘Gray’ active measures”. Available at [http://intellit.muskingum.edu/russia\\_folder/pcw\\_era/sect\\_03.htm#Gray](http://intellit.muskingum.edu/russia_folder/pcw_era/sect_03.htm#Gray) (1.12.2008).

<sup>17</sup> *Ibid.*, see chapter “‘Black’ or covert active measures – see for details”. Available at [http://intellit.muskingum.edu/russia\\_folder/pcw\\_era/sect\\_03.htm#Black](http://intellit.muskingum.edu/russia_folder/pcw_era/sect_03.htm#Black) (1.12.2008).

<sup>18</sup> This day, these tasks are performed by the Bureau of International Information Programs. See their Web site <http://www.state.gov/r/iip/> (01.12.2008).

<sup>19</sup> L. Scott. *Secret Intelligence, Covert Action and Clandestine Diplomacy*. – L.V. Scott, P. D. Jackson (eds.). *Understanding Intelligence in the Twenty-First Century. Journeys in Shadows*. London, New York: Routledge 2004, p. 163.

<sup>20</sup> Compiled by: L. Mälksoo. *Rahvusvahelise õiguse lepingud (Treaties of International Law)*. Tallinn: Juura 2006, p. 598 (in Estonian). In 2005, a dispute developed about the Tartu Peace Treaty between historians and legal scholars (see E. Medijainen. *Hidden Corners of the Tartu Peace*. Available at <http://www.epl.ee/artikkel/284235> (1.12.2008) (in Estonian); H. Lindpere. *Kas Tartu rahu kehtib? Mis tähendus on rahulepingul täna (Is the Tartu Peace Treaty Still Valid? What Meaning Has It Today?)*? Available at <http://www.epl.ee/artikkel/284237> (1.12.2008) (in Estonian)) were of the opinion that the Tartu Peace Treaty did not apply, while L. Mälksoo adopted a different opinion. (See his article *Tartu rahuleping: kehtiv või kehtetu? (Tartu Peace Treaty: valid or invalid)*. Available at <http://www.epl.ee/?artikkel=284590> (27.04.2008) (in Estonian)).

<sup>21</sup> L. J. Martin (Note 3) p. 92.

<sup>22</sup> E. Mattisen. *Tartu rahu (Tartu Peace)*. Tallinn: Eesti Raamat 1989, p. 330 (in Estonian).

<sup>23</sup> *Ibid.*

of the Peace Treaty was set out in a similar wording.<sup>\*24</sup> When explaining the importance of the Tartu Peace Treaty, E. Mattisen mentioned the following: “The Tartu Peace Treaty marked the first breakthrough of the anti-Soviet intervention chain and blockade. Here it was most important that Article VII of the Peace Treaty established mutual security guarantees. The existence of any forces, groups and organisations hostile to the other contracting party was prohibited on the territory of either of the countries. The military missions of the interventionists and the representatives of Russian White Guard “governments” had to leave Estonia after the conclusion of the Peace Treaty.”<sup>\*25</sup> In a work created close to that by E. Mattisen on the arrow of time but with rapidly changing events, Professor of History Jüri Ant emphasises the importance of the Peace Treaty. The author’s position is especially fascinating regarding the provision that “[...] neither of the parties could maintain on its territory a corps or formations of forces hostile to the other party both in a military and ideological sense, had a visible effect.”<sup>\*26</sup> Ideology that was closely related to propaganda had been included in the Treaty for a reason. We may say that in that particular time and space, ideology was an integral part of the principal conditions of the Tartu Peace Treaty of 1920. Already a few months after the entry into the Peace Treaty, Estonia had to deal with both the recruitment stations of Russian refugees and propaganda which had been prohibited under the Treaty. The fact that problems related to the recruitment stations were serious is expressed by a note of the People’s Commissioner for Foreign Affairs of the Russian SFSR to Estonia, dated 10 July 1920.<sup>\*27</sup> The Russian monarchists residing in Estonia and the publications issued by the movements connected with them posed a problem for Estonia, since they criticised both Great Britain and Poland that were viewed as important allies at the same time.<sup>\*28</sup> Optants were also important for both parties, from the point of view of the ideological fight: Estonia screened them and Soviet Russia tried to send communists for party missions to Estonia among them.<sup>\*29</sup>

### 3.1.2. Estonia’s arguments

The work by Eduard Laaman ‘Birth of Estonia’s Independence’, published prior to Soviet occupation, noted the following: “Estonia has developed a draft peace and weapon suspension treaty, in which [...] Russia recognises Estonia’s independence, renounces propaganda in Estonia, makes reparations, compensates Estonian optants for nationalisation damage.”<sup>\*30</sup> According to E. Laaman, Russia required the following: “Estonia prohibits other armies except for the Estonian national army from staying in its territory [...]; bans organisations and groups or their representations, who claim to govern the Russian State or a part thereof; also prohibits recruiting to armies who aim at fighting Soviet Russia.”<sup>\*31</sup> The negotiations held to conclude the Peace Treaty also touched upon the issue of subversive leverage or among other things propaganda; the head of the Estonian delegation, Jaan Poska, explained to the head of the Russian party, Adolf Joffe, that Estonia had certain doubts concerning Soviet Russia’s intentions regarding the Treaty, illustrating this by the call of the Red Army “Further to Narva!” and the proclamation to punish Estonian white bandits. According to the author, “the declaration hit the tender spot of the enemy — propaganda”.<sup>\*32</sup> As soon as during the year following the conclusion of the Peace Treaty, the Minister of Foreign Affairs Ants Piip, who had participated in the signing of the Treaty, was compelled to send a note to the Russian Government because there were many problems With respecting the Treaty.<sup>\*33</sup> A. Piip pointed out the problems related to clause 5 of Article VII of the Peace Treaty, noting that at Fontanka 27, Petrograd, was located the Estonian department of the Russian Communist party, whose goal was to overthrow the Estonian Government.<sup>\*34</sup> A. Piip also mentioned that there was a political party school in Petrograd, assigned to send propagandists to Estonia.<sup>\*35</sup> Further, A. Piip draw attention to a provision of international law as regarded the detention of Estonian citizens in Russia, and stated that such action was a

<sup>24</sup> L. Mälksoo (Note 20), p. 598.

<sup>25</sup> E. Mattisen (Note 22), p. 412. Here it would be appropriate to stress the importance of the work in its time, expressed by a note on page 4 that the book was edited by Hendrik Allik (who contributed to the occupation of Estonia in 1940) and Karl Siilivask, PhD, who represented the Soviet paradigm in history.

<sup>26</sup> J. Ant. Eesti 1920. Iseisvuse esimene rahuaasta (First Year of Peace during Independence). H. Arumäe (ed.). Tallinn: Olion 1990, p. 55 (in Estonian).

<sup>27</sup> *Ibid.*, p. 57.

<sup>28</sup> *Ibid.*, pp. 57–58.

<sup>29</sup> *Ibid.*, pp. 58–59.

<sup>30</sup> E. Laaman. Eesti iseseisvuse süünd (Birth of Estonian Independence). Stockholm: Kirjastus Vaba Eesti, Tryckeri AB Esto 1964, p. 671 (in Estonian).

<sup>31</sup> *Ibid.*, p. 685.

<sup>32</sup> *Ibid.*, pp. 696–697.

<sup>33</sup> A. Piip. Õiguse jõud (Power of Justice). Tartu: Ilmamaa 2007, pp. 203–213 (in Estonian).

<sup>34</sup> Considering the size of Petrograd, Fontanka 27 was not very far from the headquarters of Okhranka, the Secret Police of the Russian Empire, located at Fontanka 16, the experience and staff of which were later used by Bolshevik Russia. For details, see Ch. A. Ruud, S. A. Stepanov. Fontanka 16. The Tsars’ Secret Police. McGill-Queen’s University Press 1999.

<sup>35</sup> A. Piip (Note 33) p. 210.

direct violation of the most important principles of the Peace Treaty, founded on the assumption that the parties did not interfere in each other's internal matters and renounced mutual propaganda, while also noting that Estonia strictly fulfilled the condition.<sup>36</sup> An article by A. Piip in 1922, once again, stressed the importance of propaganda: "And were we not threatened by the possible Bolshevik propaganda all the time? We have peacefully digested it, thanks to the sanity of our people. We have set ourselves free from the slavery of words and the miracles of Bolshevik declarations."<sup>37</sup> The number of all the passages mentioning propaganda in the articles by A. Piip suggests that the phenomenon was critical before the Second World War. In his paper written in 1930, the tenth anniversary of the Treaty, A. Piip observes regarding Article VII, which sets out the military guarantees, separately referring to the dissolution of the Yudenich Army and the Estonian Red Division, "However, the performance of the provisions of clause 5 of that Article by Russia leaves much to be desired, as the Estonian section of the Comintern, regardless of the prohibition under the Treaty, continues to arrange for the "Red Estonian Government", the saddest act of which was the organisation of a rebellion in Estonia on 1 December 1924". After that, the author proceeded to note that the issue (i.e. discontinuation of agitation) had shown improvement.<sup>38</sup> In hindsight, we know that the apparent improvement of relationships, as it had seemed to A. Piip, was only illusory, and the author of the above quote had to experience the consequences imposed on Estonia by the outbreak of World War II in a GULAG. The Tartu Peace Treaty was the corner stone of the relations between Republic of Estonia and Soviet Russia (or later: the USSR), although after the restoration of Estonia's independence in 1991, Russia no longer recognizes this Treaty. An interesting interpretation of the consequences stemming from legal succession for Estonia has been presented by the former official of the Russian ministry of Foreign Affairs Mikhail Demurin who opined to the news agency Regnum in 2006, that Estonia should be declared an enemy and subjected to enforcement action under Article 107 of the UN Charter (ref. to Article 53), because by demanding recognition of the continuity with the pre-World War II Republic of Estonia positioned itself as an ally to Nazi Germany, with all the ensuing consequences.<sup>39</sup> It remains unclear, however, how Estonia's State identity with the pre-World War II republic would imply that Estonia as a State would have fought on the Axis side. The USSR had illegally occupied and annexed Estonia and the other two Baltic States already before Germany attacked the USSR in 1941.

### 3.2. Treaty on foundations of Estonian–Russian relations of January 1991

In January 1991, another treaty between Estonia and Russia was concluded. The status of the treaty partners was, however, peculiar. The independence of the Republic of Estonia was only restored in August 1991 and in January 1991, the Russian Federation (then part of the USSR), was not internationally recognised as a sovereign State either. However, what is fascinating and noteworthy in the present context, is that Article VIII of the January 1991 Treaty is very similar to the 1920 Tartu Peace Treaty provision, referred to: "The High States Parties undertake, on their territories to prohibit by their legislation the creation of such organisations and groups, the aim of which is the violent destruction of the independence and sovereignty of the other party or a violent surge to power, and impede their activities". The Article contained a provision characteristic of the present era that had not been there earlier and that governed cooperation against organised and international crime. Hence, the impact of the Estonian–Russian Peace Treaty of 1920 was rather important in shaping the new Treaty.

### 3.3. Questions raised

The similar provisions of the two Treaties prohibit propaganda, which is rather significant considering the actual political relations between our countries. Some questions can be raised based on the provisions of the above Treaties: whether it is the peculiarity of the two bilateral treaties or that the provisions were frequently used in international law at the time, and what was the historical background of such provisions? Does the UN Charter contain a regulation similar to the Peace Treaty between Estonia and Russia? The peace treaties of two of Estonia's close neighbours, Finland and Latvia, do not give a uniform clarification whether it is a peculiarity of a specific bilateral treaty or a provision frequently used in international law. Unlike the Estonian–Russian Peace Treaty, the Russian–Finnish Peace Treaty, concluded in Tartu on 14 October 1920, does not contain provisions prohibiting propaganda. Yet the Treaty set out in detail the provisions related to

<sup>36</sup> *Ibid.*, p. 212.

<sup>37</sup> *Ibid.*, pp. 272–273.

<sup>38</sup> *Ibid.*, p. 240.

<sup>39</sup> M. Demurin. *Estoniya mozhet byt' priznana "vrazheskim gosudarstvom"* po ustavu OON. – *Informatsionoe agentstvo Regnum*, 10.12.2006. Available at <http://www.regnum.ru/news/752818.html> (1.05.2008).

the demilitarisation of the Gulf of Finland.<sup>\*40</sup> The Latvian–Russian Peace Treaty, signed in Riga on 11 August 1920, again contains provisions that are rather similar to those indicated above when discussing the Estonian–Russian Peace Treaty. Hence, clauses 1 and 2 of Article IV of the Treaty are relatively similar to clause 5 of Article VII of the Estonian–Russian Peace Treaty.<sup>\*41</sup> It must be only added that the same Article also contains supplementary clauses arising from the peculiarities of Latvia, related to the activities of the Latvian Red Riflemen. The Lithuanian–Russian Peace Treaty, signed on 12 July 1920, contains clause 1 of Article IV that essentially has the same wording as the above-mentioned Article in the Estonian–Russian Peace Treaty.<sup>\*42</sup> Russia and Soviet Ukraine on the one part and Poland on the other part concluded on 12 October 1920 a treaty in order to start peace negotiations: Article II of the Treaty provides that the parties refrain from intervention in each other's affairs and undertake not to create or support the activities of groups that aim at overthrowing the governments or state power of the parties to the Treaty.<sup>\*43</sup> On 18 March 1921, the same countries signed a Peace Treaty that contained a more detailed regulation compared to the Treaties mentioned above. The declaration of Article V promised to fully respect national sovereignty; in addition, intervention in internal matters, agitation, propaganda and any intervention was prohibited along with support for such activities, such as activities of various groups, the aim of which was the overthrowing of the government or state power of the other party, and the presence of the members of such groups on the territory of the parties and recruitment for such groups, serving as the most detailed Treaty of that kind, to which Russia was a party.<sup>\*44</sup> Article V of the Russian–Persian Treaty, entered into on 26 February 1921, sets out that the parties undertake not to allow the activities of armed groups, the aim of which is battling against the other party, and prohibit provision of support to such movements for transit operations; however, compared to the above Treaties, there were no references to ideological fighting or the overthrowing of the state.<sup>\*45</sup> Article VIII of the Russian–Turkish Treaty of 16 March 1921 reminds one of the Estonian–Russian Peace Treaty, but with the important addition that Russia and Turkey undertook a mutual obligation to ensure in the Caucasian Soviet Republics regulation of the activities of such groups that aimed at overthrowing the present government.<sup>\*46</sup> Thus, when answering the question raised above, it may be said on the basis of peace treaties into which Russia entered in 1920 and 1921 **that the provisions prohibiting propaganda, included in the Estonian–Russian Peace Treaty, were not exceptional, but shaped the development of international law in this field.** Several treaties to which Russia was a party revealed the peculiarities of the other states parties; for example, analysis of the Finnish and Latvian treaties shows that they lacked the provisions included in the Estonian–Russian Peace Treaty or the provisions had been supplemented to a lesser degree. The modern principle of non-interference was established in international law at the time of the Congress of Vienna (1815), when it was set forth that the parties had to respect mutual public order and it was promised to preclude revolutionary excesses.<sup>\*47</sup> Prevention of revolutionary excesses was not thinkable without precluding propaganda. It appears that the above-described Russian treaties proceed from the same principle. Further to the present day, we should begin with the world order after World War II, in which the United Nations and the UN Charter had to play a decisive role in international law.<sup>\*48</sup> However, it soon became clear that the expectations regarding the new world order did not come true and the former allies became enemies for several decades, in the period known as the Cold War. The world that was split up mainly into two ideologically opposed parts during the Cold War served as a testing laboratory for the implementation of various methods, including subversive leverage. Although the post-Cold War world lived in a sort of euphoria at the beginning of the 1990s, which was true also according to experts in international law, who expected a certain renaissance of international law, 11 September 2001 considerably altered the great expectations for international law, the International actors became more sober.<sup>\*49</sup>

<sup>40</sup> Dokumenty vneshney politiki SSSR. Moskva: Gosudarstvennoe izdatel'stvo politicheskoy literatury 1959, pp. 265–280. See, e.g., Article 13 the Russian–Finnish Peace Treaty prohibited certain activities of military nature on Stora Tyterskär / Suuri Tytärsaari in the Gulf of Finland. The Russian–Finnish Peace Treaty generally contained more provisions governing claims for damages between the two countries and issues related to shipping (including issues concerning warships).

<sup>41</sup> *Ibid.*, the Latvian–Russian Peace Treaty, pp. 103–104.

<sup>42</sup> *Ibid.*, the Lithuanian–Russian Peace Treaty, pp. 31–32.

<sup>43</sup> *Ibid.*, the Treaty in order to start peace negotiations between Russia and the Soviet Ukraine on the one part and Poland on the other part, p. 248.

<sup>44</sup> *Ibid.*, the Peace Treaty between Russia and Soviet Ukraine on the one part and Poland on the other part, pp. 623–624.

<sup>45</sup> *Ibid.*, the Russian–Persian Treaty, p. 538.

<sup>46</sup> *Ibid.*, the Russian–Turkish Treaty, p. 600.

<sup>47</sup> For details, see S. C. Neff. *War and the Law of Nations: A General History*. Cambridge University Press 2005, pp. 219–221.

<sup>48</sup> L. Mälksoo (Note 20), pp. 23–41.

<sup>49</sup> See M. Koskeniemi. *From Apology to Utopia*. Cambridge University Press 2007, p. 563.

## 4. Events of April 2007 and their impact on international law

As mentioned in the introduction to this paper, many people believed that tension in the relations between Estonia and Russia increased at the beginning of 2007. Each story has a prologue. The events related to the entry into the boundary agreement between the Republic of Estonia and Russian Federation in Moscow on 18 May 2005 can be brought as an example of complicated legal relations. On 20 June 2005, the Estonian *Riigikogu* supplemented the agreement with a Ratification Act<sup>\*50</sup>, setting out that the agreement partly alters, in accordance with the Constitution, the line of the state border defined in the Tartu Peace Treaty, entered into between Estonia and Russia on 2 February 1920, but does not affect the rest of the Tartu Peace Treaty nor does it pre-determine the handling of the bilateral issues not related to the boundary agreements. The adoption of the Ratification Act triggered somewhat unexpected consequences: on 22 June 2005 (at the anniversary of the start of World War II in the Soviet Union), Russia announced that because of the “territorial claims made by Estonia” the agreement cannot be ratified in the State *Duma*, and withdrew its signature from the agreement. When returning to the more tense relations in 2007, one of the reasons behind them was once again international law. The Estonian *Riigikogu* adopted the Military Graves Protection Act<sup>\*51</sup> that relied on Article 34 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Based on § 8 (2) of the Act, in April of the same year, the Government of the Republic of Estonia decided to relocate the Bronze Soldier memorial because of the unsuitable site of the grave and the divisive public interest that did not ensure peace for the grave.<sup>\*52</sup> The Russian-speaking minority residing in Estonia was influenced by the TV channels owned by the Russian State and viewable across the border, in the programmes of which it was alleged that the Estonian Government was attempting to destroy the memorial and thereby desecrate the memory of the Russian soldiers fighting Nazism. Estonia was also blamed for re-writing the history of World War II. “We are witnesses to the information war against Estonia which already reminds of an **ideological aggression** [author’s highlight. — A.S.],” said the President of Estonia.<sup>\*53</sup> It is interesting to note that the UN had held an intense dialogue about the notion of ideological aggression in the 1950s, the components of which included propaganda of national hatred, Nazism and fascism.<sup>\*54</sup> The Bronze Soldier memorial was erected to the soldiers of the Soviet Union who presumably died in conquering Tallinn in 1944. It is a historical fact that when withdrawing from Tallinn on 22 September 1944, the German Army did not engage in any battles with the Red Army heading for the city.<sup>\*55</sup> Instead, the advancing Russian units encountered the Estonian flag flying in the tower of Tall Hermann, a symbol of State power in Tallinn, there were no casualties.

Attacks against the computer networks of the Estonian State and companies in May 2007 were widely discussed all over the world; articles were published in the US, British, French as well as German magazines, military journals and computer journals.<sup>\*56</sup> How could such relations be seen from the point of view of international law, whether international law was violated and whether the development of technology has changed the relation between international law and propaganda that may transfer to attacks against computer systems? It is a widely known fact that Article 2 of the UN Charter prohibits the threat of force against the territorial integrity, political independence or in any other manner inconsistent with the purposes of the United Nations. The preamble declares tolerance and expresses the desire to live in peace as good neighbours. Articles 19–20 of the UN International Covenant on Civil and Political Rights define the freedom of opinion to impart information and ideas of all kinds, regardless of frontiers and stresses the responsibility accompanying dissemination of information as well as prohibits propaganda for war and any advocacy of national, racial or religious hatred.<sup>\*57</sup> Article 3 (b) of UN resolution 3314 sets out the legal definition of aggression, defining it as the bombardment of a state by any weapons.<sup>\*58</sup> It is highly doubtful if the interpretation of the provision would include information weapons. At present, doubts have been voiced repeatedly if the UN Charter can be implemented, also in relation to subversive leverage; it has been mentioned that the Charter may serve as an aid but it would be

<sup>50</sup> Eesti Vabariigi ja Vene Föderatsiooni vaheline Eesti-Vene riigipiiri leping. – RT II 2005, 18, 59 (in Estonian).

<sup>51</sup> Sõjahaudade kaitse seadus. – RT I 2007, 4, 21 (in Estonian).

<sup>52</sup> Press Release of the Estonian Ministry of Foreign Affairs about the relocation of the monument, 27.04.2007. Available at [http://www.vm.ee/eng/kat\\_138/8370.html?arhiiv\\_kuup=kuup\\_2007](http://www.vm.ee/eng/kat_138/8370.html?arhiiv_kuup=kuup_2007) (1.05.2008).

<sup>53</sup> See statement made by the President of Estonia Toomas Hendrik Ilves, 30.04.2007. – 16 kevadpäeva (Sixteen Days in Spring). Politseiamet, May 2007, p. 16 (in Estonian).

<sup>54</sup> B. S. Murty. The International Law of Propaganda. The Ideological Instrument and World Public Order. New Haven: New Haven Press 1985, pp. 160–167.

<sup>55</sup> Estonia 1940–1945. Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity. Tallinn: Estonian International Commission for the Investigation of Crimes Against Humanity 2006, p. 1080.

<sup>56</sup> Glance at the Mirror (Note 2), pp. 58–7. Available at <http://www.un-documents.net/a29r3314.htm> (1.05.2008).

<sup>57</sup> Kodaniku- ja poliitiliste õiguste rahvusvaheline pakt. – RT II 1993, 10–11, 11 (in Estonian).

<sup>58</sup> United Nations A/RES/29/3314 (XXIX). Definition of Aggression. Available at <http://www.un-documents.net/a29r3314.htm> (1.05.2008).

of no use in achieving certain goals in cyberspace, where it is very difficult to locate enemy stations as well as organise defence.<sup>59</sup> On 1 November 2007, the UN Disarmament and International Security Committee adopted a resolution that concerns developments in the field of information and telecommunications in the context of international security. The resolution was initiated by Estonia along with the other EU Member States, who called on all UN Member States to accede to the Council of Europe Convention on Cybercrime of 2001.<sup>60</sup> Portugal, holding the Presidency of the European Union, made a statement after the adoption of the resolution, in which it highlighted potential threats to cyber security, which could originate from organised criminals, terrorists or coordinated attacks by individuals influenced, for example, by **political propaganda**.<sup>61</sup> What is the opinion of Estonia's neighbour to the east? A representative of the free press in Russia, *Novaya Gazeta*, that also quoted the Estonian views, published an article in May 2007, in which the Estonian Minister of Defence said that the cyber attacks on the state servers served as military aggression and some attacks originated from Russian national institutions.<sup>62</sup> Although in 2007, Russia denied any connection to cyber attacks against Estonia, things have slightly changed by 2008. The Head of the Centre of Military Forecasting, Anatoly Tsyganok opined in the newspaper *Gazeta* that cyber attacks against Estonia did not violate international law because there existed no such provisions that could be violated. The Colonel considered the attacks successful and noted that NATO had nothing to beat Russia in this regard, thus indirectly admitting to Russia's participation in the attacks against Estonia.<sup>63</sup> It was probably these principles that served as the basis for the doctrine, according to which it was not reasonable to attack the other country using conventional means since it was more useful to attack the enemy's knowledge pool using means of the information war.<sup>64</sup> The Martens Clause, formulated at the Hague Peace Conference of 1899 by the famous Russian international law expert of the Estonian descent, Friedrich Fromhold Martens (1845–1909), stipulates that: "populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience".<sup>65</sup> Already in 1948, the US Military Tribunal used the Martens clause in the so-called Krupp case, noting that the clause went beyond being a mere declaration in the Hague convention, which should also be applied if necessary when new circumstances that had not surfaced before appeared in military activity.<sup>66</sup> It would also be appropriate to mention Protocol Additional to the Geneva Conventions of 12 August 1949, relating to defence in armed conflicts, Article 36 of which (new weapons) stated that "**in the study, development, acquisition or adoption of a new weapon, means or method of warfare** [author's highlight – A.S.], a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party".<sup>67</sup> Such a provision of international law should not be unfamiliar to a military expert of a civilised country. Military experts certainly would know about these kinds of existing norms. I. Deter Frankopan also placed information war in the chapter on armament limitations and noted that although the problem had been acknowledged on the international level, there were few studies, but in principle it could be agreed that it was, in a sense, a new type of warfare.<sup>68</sup> The US scholar L. John Martin, who studied the legal and diplomatic regulation of propaganda in the 1950s and 1960s, arrived at a conclusion that there were few possibilities on the international level to control propaganda or regulate it, with a sole exception being war propaganda that was prohibited.<sup>69</sup> The work was published long ago; has anything changed significantly since then? The most important changes have certainly been the introduction of cross-border television and, above all, the Internet, which does not essentially impose any restrictions on dissemination of information and hence also propaganda. If someone disseminates war propaganda, how can the individual be held liable if the act is committed in one country, but information is disseminated via a server located in a third country? The legal scholars analysing jurisdiction on the Internet have concluded that on the Internet, we could not speak about territoriality but the 'right of a server' that bears resemblance to the Geneva Convention on the

<sup>59</sup> Ch. C. Joyner, C. Lotrionte (Note 9), p. 827.

<sup>60</sup> See Convention of Cybercrime. – RT II 2003, 9, 32.

<sup>61</sup> Press release of the Estonian Foreign Ministry. UN Approves Resolution Related to Cyber Attacks, 2.11.2007. Available at [http://www.vm.ee/eng/kat\\_138/8979.html?arhiiv\\_kuup=kuup\\_2007](http://www.vm.ee/eng/kat_138/8979.html?arhiiv_kuup=kuup_2007) (1.05.2008).

<sup>62</sup> A. Soldatov. Kiber-syurpriz. – *Novaya Gazeta*, Nr. 40, 31.05.2007. Available at <http://www.novayagazeta.ru/data/2007/40/18.html> (27.04.2008).

<sup>63</sup> A. Novikova, V. Lyubartas. Voенно-virtualnyy alyans. – *Gazeta*, Nr 23, 8.02.2008. Available at <http://gzt.ru/world/2008/02/07/220025.html> (27.04.2008).

<sup>64</sup> S. P. Kanuck. Information Warfare: New Challenges for Public International Law. – *Harvard International Law Journal*, Winter 1996, p. 290.

<sup>65</sup> See Martens' Society's Biographical Note — Friedrich Fromhold Martens. Available at the homepage of the Martens Society at <http://www.martens.ee/?id=10456> (1.05.2008).

<sup>66</sup> D. Fleck. Friedrich von Martens: A Great International Lawyer from Pärnu. – *Baltic Defence Review* 2003 (10) 2, p. 23.

<sup>67</sup> Available at <http://www.unhcr.ch/html/menu3/b/93.htm> (3.12.2008).

<sup>68</sup> I. Deter (Note 10), pp. 272–273.

<sup>69</sup> L. J. Martin (Note 4).

High Seas and the Outer Space Treaty.<sup>\*70</sup> Referring to the Geneva and Hague conventions, the Russian scholar A. Feodorov opines that the use of information war methods should be equated with the use of weapons of mass destruction although it would be problematic.<sup>\*71</sup> In 2006, D. Brown suggested that the use of information systems in armed conflicts be regulated by an international convention.<sup>\*72</sup> As a result of the events in Estonia in 2007, D.B. Hollis made a proposal to regulate by international law information operations that would cover both propaganda and cyber attacks.<sup>\*73</sup> Thus, it is planned to regulate the no man's land on the Internet, which inevitably involves limitations on subversive leverage and propaganda. But is it possible to hold countries liable for propaganda and cyber attacks? Although it is disputable at the moment, the Articles on Responsibility of States, approved at the UN General Assembly in 2001 (not in force yet), prove helpful, in which Article 8 states that "the conduct of a person or group of persons shall be considered as an act of the state under international law if it is established that such person or group of persons was in fact acting on the instruction of, or under the direction or control of that state in carrying out the conduct."<sup>\*74</sup>

## 5. Conclusions

Subversive leverage has a historical background in the relationships between Estonia and Russia, in a political as well as in international and legal context. The events occurring in 2007 have paradoxically contributed to the development of international law in cyberspace, which gives reason to hope that cyber attacks on computer networks will be regulated in international law on the UN level in the coming years; the efficiency of such regulation is another question. There is both practical need as well as the interest on the part of the European Union Member States and the USA to regulate issues regarding cyber terrorism on an international level. Production of new international law in this field is an inevitable part of the global civilisation process. The civilisation process usually involves reduction in human desires.<sup>\*75</sup> The hope that can be felt in international law for the legal regulation of cyberspace cannot be seen in the regulation of subversive leverage at an international level, above all, because of a lack of interest by countries, notwithstanding the efforts made by our neighbour to the east.<sup>\*76</sup> There is no good without bad and the same applies to the legal relations between Estonia and Russia that probably had a significant effect on the further development of international law in the fields described above. The paper showed that, in a historical context, Estonian–Russian bilateral relations have already had a more general effect on international law.

<sup>70</sup> D. C. Menthe. Jurisdiction in Cyberspace: A Theory of International Spaces. – Michigan Telecommunications and Technology Law Review 1998 (4), pp. 93–97.

<sup>71</sup> A. Feodorov. Informatsionnyia bezopasnost' v mirovom politicheskom protsesse. Moskva: MGIMO 2006, pp. 103–110.

<sup>72</sup> D. B. Hollis. Why States Need an International Law for Information Operations. – Lewis & Clark Law Review, winter 2007, pp. 1023–1061. Available at [http://www.lclark.edu/org/lclr/objects/LCB\\_11\\_4\\_Art7\\_Hollis.pdf](http://www.lclark.edu/org/lclr/objects/LCB_11_4_Art7_Hollis.pdf) (1.05.2008).

<sup>73</sup> United Nations A/RES/56/83. Responsibility of States for internationally wrongful acts. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N01/477/97/PDF/N0147797.pdf?OpenElement> (1.05.2008).

<sup>74</sup> D. Brown. A Proposal for and International Convention to Regulate the Use of Information Systems in Armed Conflict. – Harvard International Law Journal, winter 2006 (47) 1, pp. 179–221.

<sup>75</sup> The Civilizing Process. Vol. II: State Formation and Civilization. Oxford: Blackwell 1982. See, e.g., N. Elias. The Civilizing Process. The Civilizing Process. Vol. II: State Formation and Civilization. Oxford: Blackwell 1982.

<sup>76</sup> D. B. Hollis (Note 72), p. 1037; A. Feodorov (Note 71), pp. 187–204.