

CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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GENERAL INTERNATIONAL AND U.S. FOREIGN RELATIONS LAW

The Department of State Announces Initiatives to Counter Foreign State Information Manipulation

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Identifying “[f]oreign information manipulation and interference [FIMI] [as] a national security threat,” the U.S. Department of State has announced two initiatives to counter FIMI.¹ In January 2024, the Department launched a Framework to Counter Foreign State Information Manipulation that “seeks to develop a common understanding of [the] threat [of FIMI] and establish a common set of action areas from which the United States . . . [and its] allies and partners . . . can develop coordinated responses . . . and protect free and open societies.”² Two months later, the Department unveiled a Democratic Roadmap “for global policymakers, civil society, and the private sector” that proposes steps to “tackle the information integrity challenge in ways that are consistent with democratic values, freedom of expression, and international human rights law.”³ The Framework and the Democratic Roadmap join existing and planned multinational counter-FIMI projects, including the Global Declaration on Information Integrity Online (GDIIO),⁴ the OECD Hub on Information Integrity,⁵ and the UN Code of Conduct for Information Integrity on Digital Platforms.⁶ These efforts aim to fight what the United States and the European Union (obliquely referring to actions by the Chinese and Russian governments) have jointly described as the “borderless threat [of foreign state information manipulation] that poses a risk to democratic values, processes, and stability.”⁷ The initiatives have taken on particular importance during a year in which there are major elections around the world, including in the European Union, India, Mexico, South Africa, the United Kingdom, the United States, and Venezuela.⁸ In the United States, governmental action to prevent the spread of misinformation on private platforms raises First Amendment concerns.⁹

¹ U.S. Dep’t of State, The Framework to Counter Foreign State Information Manipulation (Jan. 18, 2024), at <https://www.state.gov/the-framework-to-counter-foreign-state-information-manipulation> [<https://perma.cc/6STC-VGA9>] [hereinafter Framework].

² *Id.*

³ See U.S. Dept. of State Bureau of Cyberspace and Digital Policy, Democratic Roadmap: Building Civic Resilience to the Global Digital Information Manipulation Challenge (Mar. 15, 2024), at <https://www.state.gov/roadmap-info-integrity> [<https://perma.cc/7BJ5-UMZ9>] [hereinafter Democratic Roadmap].

⁴ See Government of Canada, Global Declaration on Information Integrity Online (Oct. 27, 2023), at https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/peace_security-paix_securite/declaration_information_integrity-integrite.aspx?lang=eng [<https://perma.cc/AHA8-Q93E>] [hereinafter GDIIO].

⁵ See OECD Hub on Information Integrity, at <https://www.oecd.org/stories/dis-misinformation-hub> [<https://perma.cc/7ZG2-HS9A>].

⁶ See United Nations, Our Common Agenda Policy Brief 8: Information Integrity on Digital Platforms 21 (June 2023), at <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-information-integrity-en.pdf> [<https://perma.cc/FMB5-28TH>]; United Nations, Code of Conduct, at <https://www.un.org/en/information-integrity/code-of-conduct> [<https://perma.cc/CJT2-GMWR>].

⁷ See U.S.-EU Summit Joint Statement (Oct. 20, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/u-s-eu-summit-joint-statement> [<https://perma.cc/7LJB-TDEK>].

⁸ See, e.g., Council of the European Union, Council Conclusions on Democratic Resilience: Safeguarding Electoral Processes from Foreign Interference, 10119/24 (May 21, 2024), at <https://data.consilium.europa.eu/doc/document/ST-10119-2024-INIT/en/pdf> [<https://perma.cc/RE3D-7JHA>].

⁹ In *Murthy v. Missouri*, the Supreme Court of the United States was asked to decide whether the federal government’s communications with social media platforms regarding COVID-19 and election-related misinformation violated users’ First Amendment rights by pressuring the platforms to censor their speech. Not reaching the merits,

At the third Summit for Democracy in March 2024, Secretary of State Antony J. Blinken avowed that “[b]uilding a more resilient information environment is . . . a vital national security interest” of the United States.¹⁰ He emphasized “the challenge of disinformation—as of material deliberately meant to deceive and divide—as well as other forms of false and misleading content.”¹¹ And he warned that “our adversaries are using disinformation to exploit fissures within our democracies by further sowing suspicion, cynicism, instability. Pitting one group against another. Discrediting our institutions.”¹² “This distortion of the marketplace of ideas,” he said, “is not an unfortunate byproduct of free speech—it’s a direct threat to freedom of expression itself.”¹³ He pointed out that “[t]he Universal Declaration of Human Rights enshrines not only the right to express ourselves; it protects our freedom . . . ‘to hold opinions without interference.’”¹⁴ “The manipulation of information,” he concluded, “undermines our ability to exercise that fundamental right.”¹⁵

At the summit, Secretary Blinken highlighted the Framework to Counter Foreign State Information Manipulation unveiled earlier this year. The Framework focuses on five “Key Action Areas” for signatories. First, countries agree to “develop[] and implement[] strategies . . . [that] ensure safeguards for freedom of expression, protection for marginalized groups, transparency in media ownership, and a commitment to protect elections from foreign malign influence.”¹⁶ Second, countries commit to “organize dedicated government institutions to lead and coordinate national efforts, international engagement, and fact-based digital communication on foreign information manipulation.”¹⁷ Third, countries pledge to “[b]uild[] effective capacity [to counter FIMI] . . . [through] investing in digital security tools that can detect foreign state information manipulation and ensuring interoperability between government partners.”¹⁸ Fourth, countries promise to “protect and support the role of independent media, promote independent fact checking and media and digital literacy, and welcome public advocacy,” as “[c]ivil society, independent media, and academia can play essential roles in” countering FIMI.¹⁹ And fifth, countries agree that “[m]ultilateral organizations that leverage international cooperation to counter and build resilience against foreign state information manipulation are indispensable to alleviating information and capability shortfalls across partner nations.”²⁰ Nineteen countries and the United States have endorsed the Framework to date.²¹ To facilitate implementation, the United States is

the court found that the plaintiffs lacked Article III standing. *See* *Murthy v. Missouri*, No. 23-411 (U.S. S. Ct. June 26, 2024).

¹⁰ U.S. Dep’t of State Press Release, *Building A More Resilient Information Environment* (Mar. 18, 2024), at <https://www.state.gov/building-a-more-resilient-information-environment> [<https://perma.cc/FR7P-YETL>] [hereinafter *Blinken Speech*].

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Framework, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See* U.S. Dep’t of State Press Release, Secretary Antony J. Blinken and Romanian Foreign Minister Luminita Odobescu at the Signing of a Memorandum of Understanding on Countering Foreign State Information

entering into agreements with countries to “train[] partners to analyze disinformation, build[] capacity and resilience to this challenge.”²²

A second major initiative, the Democratic Roadmap, announced in March, posits that, given the capacities of new technologies, governments, the private sector, journalists, and civil society must “build civic resilience to digital information manipulation and . . . strengthen the integrity of the digital information realm in support of democracy.”²³ The Roadmap lays out four steps and a detailed list of best practices to “tackle the information integrity challenge in ways that are consistent with democratic values, freedom of expression, and international human rights law.”²⁴ The first of these is to “[h]ighlight the importance of the digital information manipulation challenge.”²⁵ According to the Roadmap, “[d]egradation in the integrity of the global digital information realm has contributed to the erosion of citizen trust in democratic values and institutions.”²⁶ Second, countries must “[r]ecognize that building information integrity can be consistent with freedom of opinion and expression.”²⁷ Since “digital information manipulation undermines one’s ability to exercise the freedom to seek and receive information necessary to form opinions,” protecting freedom of expression is consistent with “preventing the spread of ‘harmful’ content.”²⁸ Third, private digital platforms should reinforce their ability to promote information integrity.²⁹ This can be done through community guidelines and enhance transparency about algorithms, privacy, the sharing of data, advertising, and generative artificial intelligence content.³⁰ Finally, the Roadmap calls for the “address[ing] generative AI (GAI), particularly in the context of global 2024 elections.”³¹ This could be accomplished by “incentivizing private sector investment in beneficial applications of GAI that build civic resilience to digital information manipulation and enhance the quality of the digital information realm.”³²

The Framework and the Democratic Roadmap build upon the work of the State Department’s Global Engagement Center (GEC), which is tasked with coordinating U.S. government actions “to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining or influencing the policies, security, or stability of the United States, its allies, and partner nations.”³³ Focusing

Manipulation (June 21, 2024), at <https://www.state.gov/secretary-antony-j-blinken-and-romanian-foreign-minister-luminita-odobescu-at-the-signing-of-a-memorandum-of-understanding> [<https://perma.cc/K6AT-Z7XQ>].

²² Blinken Speech, *supra* note 10.

²³ Democratic Roadmap, *supra* note 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See id.*

³⁰ *See id.*

³¹ *Id.*

³² *Id.*

³³ U.S. Dep’t of State, Global Engagement Center, at <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/global-engagement-center> [<https://perma.cc/LPQ2-ZYUY>]. Created by executive order as the Center for Strategic Counterterrorism Communications and renamed in 2016, the GEC was originally authorized to “support[] agencies in Government-wide public communications activities targeted against violent extremism and terrorist organizations.” *See* Exec. Order 13,584 (Sept. 9, 2011); Exec. Order

mostly on Russia and China, the GEC has released countless reports describing instances of foreign campaigns to influence public opinion.³⁴ The reports denounce Russia's "never-ending attempts" to spread misinformation.³⁵ One describes an extensive history of campaigns to disseminate disinformation on biological weapons as a way "to create distrust in the [United States]."³⁶ Others focus on antisemitic propaganda,³⁷ the ongoing campaign to garner support for the war against Ukraine,³⁸ and the spreading of anti-U.S. and anti-European disinformation in Africa and Latin America.³⁹ The GEC has accused the Russian intelligence services of "laundering" false information through unbranded social media accounts to discredit American initiatives in a seemingly "organic" way.⁴⁰

The GEC has similarly condemned China. It has claimed that China intentionally spreads disinformation and censors dissenting voices, investing billions of dollars to advance biased discourse.⁴¹ The GEC lists several "deceptive and coercive" manipulation methods used by China, such as spreading pro-Chinese content in traditional media and online platforms. These methods include the use of social media bots to boost engagement, cooperation with other authoritarian governments to shape discourse, and intimidation of journalists and media outlets.⁴² A GEC report emphasizes the use of the popular social media platform TikTok to drive disinformation efforts, accusing its Chinese owner, ByteDance, of censoring and tracking dissidents.⁴³ TikTok has garnered significant attention from Congress and been (and continues to be) the subject of a comprehensive investigation from the Committee on Foreign Investment in the United States for its potential to aid foreign actors in spreading

13,721 (Mar. 14, 2016). The GEC was established by statute in late 2016 "to lead, synchronize, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining United States national security interests." National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, § 1287, 130 Stat. 2000, 2546 (Dec. 23, 2016). Its current mandate dates from 2018. See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, § 1284, 132 Stat. 1636, 2076 (Aug. 13, 2018).

³⁴ Blinken Speech, *supra* note 10.

³⁵ See U.S. Dep't of State Global Engagement Center, *The Kremlin's Never-Ending Attempt to Spread Disinformation about Biological Weapons* (Mar. 14, 2023), at <https://www.state.gov/the-kremlins-never-ending-attempt-to-spread-disinformation-about-biological-weapons> [<https://perma.cc/7N7F-QWBV>].

³⁶ *Id.*

³⁷ See U.S. Dep't of State Global Engagement Center, *More than a Century of Antisemitism: How Successive Occupants of the Kremlin Have Used Antisemitism to Spread Disinformation and Propaganda* (Jan. 25, 2024), at <https://www.state.gov/more-than-a-century-of-antisemitism-how-successive-occupants-of-the-kremlin-have-used-antisemitism> [<https://perma.cc/VJ89-RTNL>].

³⁸ See U.S. Dep't of State Global Engagement Center, *Disinformation Roulette: The Kremlin's Year of Lies to Justify an Unjustifiable War* (Feb. 23, 2023), at <https://www.state.gov/dismarming-disinformation/disinformation-roulette-the-kremlins-year-of-lies-to-justify-an-unjustifiable-war> [<https://perma.cc/89H9-BULG>].

³⁹ See U.S. Dep't of State Press Release, *The Kremlin's Efforts to Covertly Spread Disinformation in Latin America* (Nov. 7, 2023), at <https://www.state.gov/the-kremlins-efforts-to-covertly-spread-disinformation-in-latin-america> [<https://perma.cc/9XZP-QNPJ>] [hereinafter *Disinformation in Latin America*]; U.S. Dep't of State Press Release, *The Kremlin's Efforts to Spread Deadly Disinformation in Africa* (Feb. 12, 2024), at <https://www.state.gov/the-kremlins-efforts-to-spread-deadly-disinformation-in-africa> [<https://perma.cc/A34H-FW8N>] [hereinafter *Disinformation in Africa*].

⁴⁰ See *Disinformation in Latin America*, *supra* note 39; *Disinformation in Africa*, *supra* note 39.

⁴¹ U.S. Dep't of State Global Engagement Center, *Special Report, How the People's Republic of China Seeks to Reshape the Global Information Environment*, at 4–5 (Sept. 28, 2023), at https://www.state.gov/wp-content/uploads/2023/10/HOW-THE-PEOPLES-REPUBLIC-OF-CHINA-SEEKS-TO-RESHAPE-THE-GLOBAL-INFORMATION-ENVIRONMENT_508.pdf [<https://perma.cc/4K94-FA36>].

⁴² *Id.* at 6–7.

⁴³ *Id.* at 21.

misinformation.⁴⁴ A law enacted in April bans the platform in the United States if ByteDance does not execute a “qualified divestiture” of TikTok.⁴⁵

The Framework and the Roadmap join a series of international initiatives to combat disinformation online. Most notably, in September 2023, thirty-two countries, including the United States,⁴⁶ signed the GDIIO.⁴⁷ Defining “information integrity” as “an information ecosystem that produces accurate, trustworthy, and reliable information,” the GDIIO “establishes . . . international commitments by participating States to protect and promote information integrity online.”⁴⁸ Those commitments include: addressing “information integrity and platform governance” in ways consistent with international human rights law; responding to new technologies such as generative artificial intelligence to identify their potential risks and benefits; and “[r]efrain[ing] from unduly restricting human rights online, especially the freedom of opinion and expression, under the guise of countering disinformation.”⁴⁹ The GDIIO also invites online platforms to: “[e]ncourage a responsible, human rights-based and human-centric design, development, implementation, and use” of technologies, particularly generative AI, “in a manner that upholds and safeguards information integrity online”; “[e]nhance the transparency and accountability of algorithms”; “[e]stablish [advertising] policies . . . that support education and user empowerment and that preserve election and democratic integrity”; and “[e]nsure the trustworthiness of their services with respect to accounts that purposely undermine information integrity.”⁵⁰

The challenge for all of these initiatives is to establish regulatory measures that ensure information integrity within a human rights frame that prioritizes free expression. They seek to accomplish this by: (1) construing those measures as expression-enhancing; and (2) calling on private companies and social media platforms to implement information-integrity principles.⁵¹ As Secretary Blinken stated in his March speech, “accurate information, fundamentally, is a public good,” and it will take collaboration across government, private actors, and the public “to build a more open and more resilient environment for information, and continue to deliver a better future for [American] people and people around the world.”⁵²

In the European Union, the Digital Services Act requires media companies to counter “negative effects on civic discourse and electoral processes,”⁵³ but in the United States,

⁴⁴ Sapna Maheshwari, David McCabe & Annie Karni, *House Passes Bill to Force TikTok Sale From Chinese Owner or Ban the App*, N.Y. TIMES (Mar. 13, 2024), at <https://www.nytimes.com/2024/03/13/technology/tiktok-ban-house-vote.html>.

⁴⁵ See Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. 118-50, Div. H (Apr. 24, 2024).

⁴⁶ See Government of the Netherlands, Canada and the Netherlands Launch the Global Declaration on Information Integrity Online (Sept. 20, 2023), at <https://www.government.nl/latest/news/2023/09/20/canada-and-the-netherlands-launch-the-global-declaration-on-information-integrity-online> [<https://perma.cc/9GSP-VY75>].

⁴⁷ GDIIO, *supra* note 4.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See, e.g., White House Press Release, U.S.-EU Joint Statement of the Trade and Technology Council (Apr. 5, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/05/u-s-eu-joint-statement-of-the-trade-and-technology-council-3> [<https://perma.cc/SR6D-FSSX>].

⁵² Blinken Speech, *supra* note 10.

⁵³ See Digital Services Act, Regulation (EU) 2022/2065, Arts. 34(1)(c), 35(1); see also Commission Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes Pursuant to Article 35(3) of Regulation (EU) 2022/2065, C/2024/3014; Adam

government regulation of media companies is more restricted due to the First Amendment. Sensitive to this, James P. Rubin, Special Envoy and Coordinator of the Global Engagement Center, has advocated “find[ing] ways to label those information operations that are generated by the Chinese government or the Kremlin but to which they don’t admit.”⁵⁴ “In principle every government should be free to convey their views, but they should have to admit who they are,” he said in an interview.⁵⁵ “What is wrong,” he said, “is a covert operation to manipulate information by secretly inserting it into the system without a made-in-the-Kremlin stamp on it. When people read this stuff they should know it comes from the Russian government, and it is legitimate to point that out without anyone trying to censor anyone’s thoughts or opinions.”⁵⁶ “In the end,” he concluded, “that is all I know we can do right now without interfering with a free press.”⁵⁷

The United States Designates the Overthrow of Niger’s Government a “Coup d’Etat”
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More than two months after the ouster of President Mohamed Bazoum, the United States announced in October 2023 that it had “concluded that a military coup d’etat has taken place in Niger.”¹ Nigerien soldiers had confined President Bazoum to the presidential palace on July 26, 2023, and declared that he had been removed from office due to “the deteriorating security situation and bad governance.”² That day, Secretary of State Antony J. Blinken “call[ed] for [President Bazoum’s] immediate release” and “condemn[ed] any effort to seize power by force.”³ But neither Secretary Blinken nor National Security Advisor Jake Sullivan, who “strongly condemn[ed] any effort to detain or subvert the functioning of Niger’s democratically elected government, led by President Bazoum,” referred to the military’s action as a “coup.”⁴ Under Section 7008 of the Foreign Assistance Act,⁵ that designation would have

Satariano, *Illicit Content on Elon Musk’s X Draws E.U. Investigation*, N.Y. TIMES (Dec. 18, 2023), at <https://www.nytimes.com/2023/12/18/technology/x-twitter-european-union-investigation.html>.

⁵⁴ Patrick Wintour, *US Leading Global Alliance to Counter Foreign Government Disinformation*, GUARDIAN (Feb. 26, 2024), at <https://www.theguardian.com/technology/2024/feb/26/us-leading-global-alliance-to-counter-foreign-government-disinformation> (quoting Special Envoy Rubin).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

¹ U.S. Dep’t of State Press Release, *Military Coup d’Etat in Niger* (Oct. 10, 2023), at <https://www.state.gov/military-coup-detat-in-niger> [<https://perma.cc/6TLR-VFUC>] [hereinafter *Coup d’Etat in Niger*].

² See Rachel Chason & Dan Lamothe, *Soldiers in Niger Claim President Is Ousted in Coup*, WASH. POST (July 27, 2023), at <https://www.washingtonpost.com/world/2023/07/26/niger-president-ousted-coup/>.

³ U.S. Dep’t of State Press Release, *Secretary Antony J. Blinken and New Zealand Nanaia Mahuta at a Joint Press Availability* (July 26, 2023), at <https://www.state.gov/secretary-antony-j-blinken-and-new-zealand-nanaia-mahuta-at-a-joint-press-availability> [<https://perma.cc/Z7Y7-C8DV>].

⁴ White House Press Release, *Statement from National Security Advisor Jake Sullivan on Developments in Niger* (July 26, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/26/statement-from-national-security-advisor-jake-sullivan-on-developments-in-niger> [<https://perma.cc/W4ZX-C7JN>].

⁵ The act currently prohibits certain appropriations, with some exceptions, from “be[ing] obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup d’etat or decree or . . . a coup d’etat or decree in which the military plays a decisive