

## **Working Paper**

### **Applicability of international law, in particular the United Nations Charter, in the use of ICTs: areas of convergence**

#### **Proposed Text for Inclusion in APR International Law Section**

Australia, Colombia, El Salvador, Estonia, Uruguay

24 July 2023

Guided by the roadmap set out in the consensus 2022 Annual Progress Report (2022 APR), the Chair welcomed States to consider a first cluster of issues:<sup>1</sup> How international law, in particular the Charter of the United Nations applies in the use of ICTs; sovereignty; sovereign equality; non-intervention in the internal affairs of other States; and peaceful settlement of disputes; as well as capacity building efforts on international law. A record number of States shared their views on the applicability of international law to state use of ICTs in the March and May 2023 sessions of the OEWG. The detailed interventions demonstrated the value of regular, continuing discussions on the topic. Many States expressed a commitment to furthering the common understanding of how international law applies to States' use of ICTs through focused discussions in future sessions of this OEWG.

States also addressed the Chair's questions regarding whether there may be any gaps in the legal framework that regulates States' conduct in the use of ICTs.<sup>2</sup> There were a variety of views, with some States responding that, when implemented and adhered to, existing international law, complemented by voluntary norms, provides a robust and well-established framework to address the use of ICTs by States, while other States opined that new rules may be required. Many States underscored the need to implement the existing framework and further develop common understandings on how international law

---

<sup>1</sup> Letter from the Chair of the Open-Ended Working Group on security of and in the use of information and communications technologies 2021-2025 (Burhan Gafoor), 3<sup>rd</sup> of March 2023, p. 8.

<sup>2</sup> Ibid.

applies in the use of ICTs before being in a position to conclude whether or not there are gaps that would require new rules.

States reaffirmed the cumulative and evolving framework for responsible State behaviour in the use of ICTs, including the final substantive reports of the previous OEWG and GGEs, which have been endorsed by the General Assembly.<sup>3</sup> As noted in these reports, States reaffirmed that international law, and in particular the Charter of the United Nations, is applicable and essential to maintaining peace and stability and promoting an open, secure, stable, accessible and peaceful ICT environment.

This OEWG has identified the following areas of emerging convergence in States' views on international law:

- (1) States reaffirmed that the principles and binding obligations of the Charter of the United Nations apply to States' behaviour in the use of ICTs. This includes, *inter alia*, the following binding obligations:
  - (a) Article 2(3) which requires all States to settle their international disputes, including with respect to the use of ICTs, by peaceful means in such a manner that international peace and security, and justice, are not endangered.
  - (b) Article 2(4), which requires all States to refrain in their international relations, including relations involving the use of ICTs, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles and purposes of the United Nations.
  - (c) Article 33, which requires that States shall seek the peaceful settlement of disputes, first of all, by seeking a solution by negotiation, enquiry, mediation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

---

<sup>3</sup> United Nations General Assembly (UNGA), Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, UNGAOR, 68th Sess, UN Doc [A/68/98](#) (2013) (2013 GGE Report) (later adopted by the UNGA Resolution [A/RES/68/243](#)); UNGA, Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, UNGAOR, 70th Sess, UN Doc [A/70/174](#) (2015) (2015 GGE Report) (later adopted by the UNGA Resolution [A/RES/70/237](#)); UNGA, Report of the Open-ended working group on developments in the field of information and telecommunications in the context of international security, UN Doc [A/75/816](#) (2021) (2021 OEWG Report); UNGA, Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, 76th Sess, UN Doc [A/76/135](#) (2021) (2021 GGE Report) (both later adopted by UNGA Resolution [A/RES/76/19](#)).

- (2) States also reaffirmed the application of the obligation, under customary international law, not to coercively intervene in the internal or external affairs of another State (prohibited intervention) in cyberspace, which flows from other fundamental principles reflected in the UN Charter, in particular the principle of sovereignty.
- (3) States recognised
  - (a) that international law is the basis for States' shared commitment to preventing conflict and maintaining international peace and security and is key to enhancing confidence among States;
  - (b) that rules of international law contribute to peace and security by establishing the rights and obligations of States to regulate their conduct and by providing tools for de-escalation;
  - (c) that in addition to articles 2(3) and 33, Chapter VI of the Charter of the United Nations more broadly provides for the peaceful settlement of disputes, which is applicable to states' conduct in cyberspace; and
  - (d) the value of deepening common understandings of the application of existing international law to States' behaviour in the use of ICTs, which increases the predictability of State behaviour, lowers the risk of miscalculation and clarifies the consequences of unlawful State behaviour.

States endorsed the continued use, in the upcoming sessions of the Group, of the roadmap for discussion, set out in paragraph 15(a)(b)(c) and (d) of the 2022 APR. These topics include State responsibility and due diligence; respect for human rights and fundamental freedoms; proposals contained in the 2021 OEWG report and Chair's summary where relevant; international humanitarian law; and sharing national views on a voluntary basis.