

Internet Governance in the UNGGE

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Internet Governance in the UNGGE

- The UNGGE did not deal with “Internet governance” directly, as shown from the report of the 4th UNGGE.
 - “All States have a stake in making cyberspace more secure. Our efforts in this realm must uphold the global commitment to foster an open, safe and peaceful Internet. In that spirit, I commend the present report to the General Assembly and to a wide global audience as a crucial contribution to the vital effort to secure the ICT environment.” (Forward by the Secretary-General)
 - “13(e) States, in ensuring the secure use of ICTs, should respect Human Rights Council resolutions 20/8 and 26/13 on the promotion, protection and enjoyment of human rights on the Internet, as well as General Assembly resolutions 68/167 and 69/166 on the right to privacy in the digital age, to guarantee full respect for human rights, including the right to freedom of expression;” (Norms for the responsible State behavior)
 - “33. The United Nations should play a leading role in promoting dialogue on the security of ICTs in their use by States and developing common understandings on the application of international law and norms, rules and principles for responsible State behaviour. Further work could consider initiatives for international dialogue and exchange on ICT security issues. These efforts should not duplicate ongoing work by other international organizations and forums addressing issues such as criminal and terrorist use of ICTs, human rights and Internet governance.” (Conclusions)

Internet Governance in the UNGGE

- The Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UNGGE)
 - Established in the First Committee of the UNGA by the UN Secretary General in 2004-2005, 2009-2010, 2012-2013, and 2014-2015, and again established in 2016-2017
 - Unprecedentedly being held in consecutive years
 - Initiated by Russia in particular
 - The First Committee deals with disarmament, global challenges and threats to peace that affect the international community and seeks out solutions to the challenges in the international security regime.
 - Thus GGEs deal with the matters relating to peace and security.

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- 5th GGE (2016-17) mandate “Requests the Secretary-General, with the assistance of a group of governmental experts, ... to continue to study, with a view to promoting common understandings, existing and potential threats in the sphere of information security and possible cooperative measures to address them and how international law applies to the use of information and communications technologies by States, as well as norms, rules and principles of responsible behaviour of States, confidence-building measures and capacity-building ...” (Para. 5)

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- The 3rd GGE (2012-13): “International law, and in particular the Charter of the United Nations, is applicable and is essential to maintaining peace and stability and promoting an open, secure, peaceful and accessible ICT environment.” (Para. 19)
 - Although not explicitly mentioned, *jus ad bellum* and *jus in bello* are fundamental bodies of international law for the use of force in and through cyberspace.
 - *jus ad bellum*: the body of law addressing, inter alia, uses of force triggering a State’s right to use force in self-defense
 - *jus in bello*: the body of law governing the conduct of hostilities in the context of armed conflict
 - The try to explicitly mention the issues of law of armed conflicts in cyber context by some members was a direct cause of failure in gaining consensus in the 5th UNGGE.

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- The UNGA in its Resolution (A/RES/70/237) adopted on 23 December 2015 welcomed “the conclusion of the Group of Governmental Experts in its 2013 report 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 information and communications technology environment”.
 - Instead of taking note of, it called upon Member States of the UN “[t]o be guided” in their use of ICTs by the 2015 report of the GGE.
- GGEs have been getting more importance in the development of international cyber law in particular for peace and security purposes.
 - The number of membership has increased from 15 to 20 and 25.

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- Although there's been apparent consensus in GGE reports, western countries take the view that the scope of international law should be expanded to cyberspace, while other countries argue that new treaties are needed.
 - A certain number of countries (C) are opposed to the inclusion of IHL to be applicable to cyberspace in particular.
 - While the need for further study on self-defense was recognized in the 4th GGE (Para. 28(c)), "use of ICTs in conflicts" is interestingly deleted in the mandate for the 5th GGE.

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- What UNGGEs have been doing is a kind of studying or developing, not making international law for cyberspace (international cyber law).
 - Being a good learning process
 - To find problems in applying existing international law to cyberspace
 - To explore and agree to improvements in international cyber law
- Specific rules, if any, reflecting the distinguished nature of cyberspace may be further developed.
 - “[U]nique attributes of networked technology require additional work to clarify how these norms apply and what additional understandings might be necessary to supplement them” (White House, International Strategy)

A Way Forward for the Bright Internet

- Although the UNGGE in information security has not worked for the Internet governance as such, it must be contributing to the aim proposed by the Bright Internet.
 - The UNGGE's mandate was to contain threats to the Internet by examining how international law applies to cyberspace and considering voluntary, non-binding norms of responsible State behavior and confidence building measures.
 - These work of the UNGGE is certain to be relevant for the Bright Internet.