



CZECH REPUBLIC

Statement by

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(check against delivery)

**at the 2nd substantive session
of the
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international security**

**of the First Committee of the
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International law

The Czech Republic commends the work of the UN GGE regarding the application of international law to the use of ICT's and welcomes both multilateral, including those in the OEWG, as well as national efforts towards that end.

The Czech Republic is opposed to negotiating a new legal instrument for two principal reasons.

First, as stated by the GGE and many of my colleagues here, existing international law applies to cyberspace in its entirety. Indeed, existing international law provides us with all the necessary tools to prevent actual conflicts in cyber domain. The issue at stake is not a gap in existing law, but compliance with existing law and reaching a common understanding on how to apply the law to today's environment.

Second, the Czech Republic opposes negotiating a new legal instrument, because the developments in ICTs are so rapid and dynamic as to render any potential result of such effort obsolete, perhaps even before we all ratify the outcome. Instead, the Czech Republic prefers an achieving a robust consensus on a dynamic application of international law which will be able to adapt to new developments.

For obvious historical reasons, none of the existing international law instruments explicitly refer to cyber issues. However, this does not mean these instruments somehow cannot be applied to cyberspace. On the contrary, in its advisory opinion of 1971 the International Court of Justice found that an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation. This concept of dynamic, or evolutionary interpretation is also implied in Article 31(3)b of the Vienna Convention on the Law of Treaties.

With that perspective, the Czech Republic would like to highlight its views regarding the applicability of international law in three priority areas: sovereignty, human rights, and international humanitarian law.

National Sovereignty over ICTs

First, the Czech Republic recalls that the principles of sovereignty and sovereign equality of States are cornerstones of the UN Charter and thus concurs with the conclusion contained in the report of the UN GGE that in their use of ICT's States are obliged to observe principles of international law, including the principle of sovereignty. The Czech Republic concurs with

those considering the principle of sovereignty as an independent right and the respect to sovereignty as an independent obligation.

The Czech Republic firmly believes that under this principle States may freely exercise without interference in any form by another State both aspects of sovereignty in cyberspace, be it an internal one, with the exclusive jurisdiction over the ICTs located on its territory, or the external one, including the determination of its foreign policy, subject only to obligations under international law.

The Czech Republic considers the following cyber operations in a State's territory as violation of its sovereignty, if attributable to another State:

- A. a cyber operation causing death or injury to persons or significant physical damage;
- B. a cyber operation causing damage to or disruption of cyber or other infrastructure with a significant impact on national security, economy, public health or environment;
- C. a cyber operation interfering with any data or services which are essential for the exercise of inherently governmental functions, and thereby significantly disrupting the exercise of those functions; for example, distributing ransomware which encrypts the computers used by a government and thus significantly delaying the payment of retirement pensions ;
- D. cyber operation against a State or entities or persons located therein, including international organisations, conducted by a physically present organ of another State;

International Human Rights

Second, the Czech Republic also recognizes that the rights of states to exercise exclusive jurisdiction over the ICTs located on its territory gives rise not only to rights but also obligations. In particular, the Czech Republic wishes to reiterate that international human rights law is applicable to cyberspace in its entirety.

Indeed, the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, the Czech Republic reiterates that freedom of peaceful assembly and of association, enshrined in Article 22 of the ICCPR, applies to cyberspace as much as it applies to the physical domain.

In this context, the Czech Republic calls attention to the recommendations of the UN Special Rapporteur that call on states to ensure that any interference with the rights to freedom of peaceful assembly and of association is “*prescribed by law*”. Furthermore, any restrictions implemented on the grounds of “*national security*”, “*public safety*” or “*protection of morals*” should be clearly and narrowly defined in law, so as to prevent their abuse by authorities.¹

Finally, the Czech Republic recalls that the right to privacy, enshrined in Article 17 of the ICCPR, is fully applicable in the digital sphere. States must demonstrate that any interference with an individual’s privacy is both necessary and proportionate to address the specific identified security risks. We see the role for a private sector here as well.

In this context, the Czech Republic calls upon all States to address cybersecurity concerns in accordance with their international human rights obligations to ensure the protection of all human rights online, in particular the three rights we just spoke of - freedom of opinion and expression, freedom of association and the right to privacy.

I already mentioned yesterday that the Czech Republic welcomes initiative of Freedom Online Coalition and fully supports its recent Joint statement on Human Rights Impact of Cybersecurity Laws, Practices and Policies approved at the summit in Accra last week.²

International Humanitarian Law

Third, the Czech Republic recognizes that International humanitarian law (IHL) applies to cyber operations during armed conflicts, on the understanding that this neither encourages the militarization of cyberspace, nor legitimizes cyber warfare, just as IHL does not legitimize any other form of warfare.

It is essential to underline that IHL does not promote the militarisation of cyberspace. On the contrary, it reduce its lawful military use by creating limits and requiring for all used means and methods to be employed in accordance with its rules; including the principles of humanity and distinction and the principle of proportionality.

In conclusion, Mr. Chair, we appreciate the opportunity to put our views on the record and encourage States to further exchange views and practices in this regard.

¹ Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, available at : <https://daccess-ods.un.org/TMP/8211477.39887238.html>

² Freedom Online Coalition Joint Statement on Human Rights Impact of Cybersecurity Laws, Practices and Policies, available at: <https://freedomonlinecoalition.com/news/foc-issues-joint-statement-on-human-rights-impact-of-cybersecurity-laws-practices-and-policies/>