

24 March 2022

ELAC Intervention

*United Nations Open-ended Working Group on security of and in the use of
information and communications technologies (OEWG)*

Second Substantive Session

Good morning, Mr Chair, Respected Delegates,

My name is Tsvetelina van Benthem and I am intervening on behalf of the Oxford Institute for Ethics, Law and Armed Conflict ('ELAC'). My intervention focuses on the role of international law in the regulation of the use of information and communications technologies ('ICTs'). This intervention builds on the work conducted at ELAC within the ambit of the Oxford Process on International Law Protections in Cyberspace, including the five Oxford Statements and our intervention from December 2021.

As affirmed by the OEWG in its 2021 Report, international law **applies** to the use of ICTs. This is an important and necessary foundation for our discussions, and we welcome its recognition in the Report. To say that international law **applies** does not tell us **how** it applies, and we would welcome more engagement on clarifying the way in which rules of international law apply to ICTs. This is the next necessary step in ensuring meaningful regulation of the use of these technologies.

In the lead up to and during the invasion of Ukraine, we witnessed a range of operations conducted via ICTs – distributed denial of service operations, the use of wiper malware, and relentless information operations. There is a need for clarity regarding how the law applies to such operations, as clarity can both have a

deterrent effect and allow better and more transparent decision-making on the invocation of wrongful behaviour and the taking of measures to induce compliance.

We emphasise two ways in which such clarity can be achieved.

The **first** is the explicit recognition and clarification of the application of specific rules of international law. Some of those specific rules were listed in the drafts that preceded the final 2021 report, and include the principle of non-intervention, human rights, binding obligations with a due diligence standard, such as the Corfu Channel and no-harm rules. Our Institute's work over the past two years, which will be detailed in a forthcoming compendium on the Oxford Process, has focused on the specification of these and other relevant rules of international law in the ICT environment.

The **second** is a more robust examination of positive obligations of states to prevent, deter, mitigate and redress the harms of operations using ICTs. International law requires states not only to abstain from certain behaviour, but also to take active steps to tackle harm. In addition to the Corfu Channel and no-harm rules, we want to emphasise the importance of positive obligations arising under international human rights law. To take one critical threat of our times, such positive obligations can become a vital tool for countering harmful

information operations that imperil life, health, political freedoms.

ELAC continues to work on these questions by convening workshops, producing Statements and reports. The next session of the Oxford Process will focus on response options, in particular countermeasures.

We look forward to our continued participation in the OEWG's stakeholder engagement.

Thank you.
