

31 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 afternoon, Mr Chair, and
esteemed Delegates,

My name is Talita Dias and today I am speaking on behalf of the [Oxford Institute for Ethics, Law and Armed Conflict \('ELAC'\)](#). As requested by the Chair, my remarks will focus on 'how Member States and stakeholders can better coordinate and cooperate in the area of capacity-building'. This intervention builds on the work that my team and I have conducted on the application and implementation of international law in cyberspace, including in the context of the so-called [Oxford Process on International Law Protections in Cyberspace](#). This is an ongoing research project that seeks to respond to critical cyber threats by clarifying how different rules of international law safeguard some of the **most vulnerable** targets of malicious cyber operations, including the health care sector and electoral processes, against the most significant means of attack, such as information operations and ransomware.

First and foremost, we wish to reiterate not only that **international law applies** to information and communications technologies (ICTs), as previously affirmed in the OEWG and GGE reports, but also that international law applies **in its entirety** to those technologies.

Secondly, and most crucially, some existing rules of international law

applicable to ICTs require member states to **build the necessary capacity to prevent, halt and redress** a number of online harms. Most notably, while general obligations requiring states to exercise due care or due diligence online and offline, such as the no-harm principle, are **obligations of conduct** requiring states to do **what they can** to prevent or mitigate certain harms or risks, **lack of capacity is no excuse for inaction**. This is because such **protective duties** have a **capacity-building component** that require states to put in place the **minimal governmental infrastructure** enabling them to fulfil such duties of care. The same is true of **states' positive human rights obligations**, that is, obligations to **protect** individual human rights from physical or non-physical threats as well as to **ensure** their full enjoyment online and offline. **Companies** should also exercise **due diligence** to **mitigate** their human rights impact online and offline, in line with their **human rights responsibilities**.

This **minimal state obligation to build capacity**, entails, in the first place, **legal capacity-building**, that is, acquiring the necessary knowledge of **how** states' international obligations apply to ICTs. As an academic institution focused on legal and policy research, ELAC has offered states and other stakeholders the **opportunity to acquire such legal capacity or know-how** through various means. For instance, in our periodic **workshops** that have so far led to [the](#)

Five Oxford Statements on International Law Protections in Cyberspace

we have invited and continue to invite and encourage the active participation of representatives of states, international organisations, the industry and civil society groups. We have also **partnered with institutions** that have sought to benefit from our work, such as the Organization of American States, by offering **tailored legal capacity-building workshops and courses**. We would like to **invite other interested stakeholders** to do the same, stressing that **we are open to engaging in similar legal capacity-building initiatives**.

Thirdly, and finally, we would like to stress that knowing the law is not enough for states to discharge their various capacity-building duties. The **actual implementation of basic protective measures** in the ICT environment is key. These include the enactment of basic cyber and information security regulations, the **establishment** of computer emergency response teams and open channels of communication and cooperation with other states and relevant stakeholders.

We look forward to our continued participation in the OEWG.

Thank you.
