

Cybersecurity & International Law

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Outline

- Some International Law Basics
- Cyber-Attacks and Cyber-Warfare
- Cyber-Espionage
- Cyber-Crime
- Other Issues
- General Take-Aways



Some Basics

- 2 basic types of international law:
 - a) **“Treaty Law”**: formal agreements among states to be legally bound
 - b) **“Customary International Law”**: general & consistent practice followed out of a sense of obligation
- Change in international law is generally slow...
... but technology is changing fast



Cyber-Attacks and Cyber-Warfare (I)

- There is a well-established body of int'l law regulating armed response to physical/kinetic military attacks against states
- There is also a well established body of law regulating kinetic military attacks once conflict is underway
- To what extent – if any – do those rules apply to cyber-attacks?
 - May a state respond to cyber-attacks with military force?
 - Must cyber-attacks comply with rules of distinction, proportionality, etc.?



Cyber-Attacks and Cyber-Warfare (II)

- *Emerging consensus that “normal” rules of physical space apply, but big questions of interpretation*
- Some of these differences over framework have been bridged, but major interpretive, technical, and policy questions remain:
 - What types or magnitudes of attacks trigger a right of armed self-defense?
 - Sovereignty? Counter-measures to low-level attacks?
 - What sorts of cyber-attacks violate the laws of war?
 - Attribution: how to deal with uncertainty?
- These questions are difficult to answer in abstract/advance and will remain highly contentious in

Cyber-Espionage

- Is *espionage* legal?
 - No
 - Yes
 - Maybe/sort of
- Is cyber-espionage special?
- Is “industrial” espionage special?



Cyber-Crime

- Budapest Cybercrime Convention (under auspices of Council of Europe)
 - About 40 (mostly western) state parties
 - Obligates state parties to enact laws to be able to prosecute cybercrime internally
 - Calls for mutual assistance in investigating/prosecuting
 - Contains exceptions for protecting state interests
 - Other states are joining, but many major players are not, and still others are developing parallel agreements
- Big challenges to prosecutions (extradition, bilateral legal assistance, etc.)



Other Issues

- Internet governance
- Human rights
- International trade/export controls
- “soft law”, norms, codes of conduct



General Take-Aways

- Why no major cyber-security treaty?
- Expect a patchwork of international legal efforts to deal with specific issues – and there will be major gaps
- International law has limits to effectiveness, but it's a powerful tool – so states are vying to shape it to their interests
- Many challenges are not as novel as they may seem at first (or as they are often described)

