

The 4th Working Group on International Law in Cyberspace of AALCO
2-4 September 2019, Hangzhou, China

Annotated Provisional Agenda

Provisional agenda

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 - (2) Adoption of the agenda and organization of work
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Annotations

1. Organizational matters
 - (a) Opening of the meeting

The Fourth Meeting of AALCO Working Group on International Law in Cyberspace will be opened on Monday, 2 September 2019, at 10 a.m.

- (b) Adoption of the agenda and organization of work

Taking note of the deepening international discussions in the field of international law in cyberspace, Member States, in the Fifty-fourth Annual Session, decided to establish an Open-ended Working Group by consensus to further discuss the issues of International Law in Cyberspace.

In accordance with the decision at the Fifty-fourth Annual Session, the First Meeting of AALCO Working Group on International Law in Cyberspace was convened during the Fifty-fifth Annual Session of AALCO. H.E. Mr. Hossein Panahi Azar, then Director General for

International Legal Affairs, Ministry of Foreign Affairs, Islamic Republic of Iran, H.E. Ms. Njeri Mwangi Wachira, Chief State Counsel, Kenya, and Prof. Zhixiong Huang of Wuhan University Law School of the People's Republic of China, were respectively elected as the Chairperson, Vice-Chairperson and Rapporteur of the Working Group. During the meeting, delegates of the Member States addressed some important issues such as applicability of international law in cyberspace, the domestic legal framework, State sovereignty in cyberspace, rules of international cooperation in combating cybercrimes, etc.

In February 2017, the Second Meeting of the Open-ended Working Group on International Law in Cyberspace was convened. The following topics were discussed: State sovereignty in cyberspace, law and governance of cyberspace, cyber warfare, cybercrimes and international law.

During the Fifty-sixth Annual Session of AALCO in 2017, a Special Study on International Law in Cyberspace prepared by the Secretariat was released. The Annual Session adopted the Special Study, and directed the Rapporteur to prepare a Report on the basis of the discussions that have taken place thus far among the Member States, and the Special Study prepared by the Secretariat, laying down a future plan of action for the Working Group.

In April 2018, the Special Rapporteur prepared a "Report on the Future Plan of Action of the Working Group Meeting", that was sent to all Member States by the Secretariat.

During the Fifty-seventh Annual Session of AALCO in 2018, the Third Meeting of the Open-ended Working Group on International Law in Cyberspace was convened. Delegates of the Member States discussed the "Report on the Future Plan of Action of the Working Group Meeting" prepared by the Special Rapporteur.

In July 2019, upon the invitation of the Government of the People's Republic of China, the Secretariat of AALCO notifies the Member States that the Fourth Meeting of the Open-ended Working Group on International Law in Cyberspace will be convened in Hangzhou, China, from 2-4 September 2019. One or more panels will be set up during the meeting. Panelists will be nominated by Member States with the aim to initiate and facilitate the discussion. Delegates of the Member States are

encouraged to interact with the panelists under relevant topics.

2. International Cooperation for Combating Cybercrime (issues relating to Member States' response to the questionnaire)

The Special Rapporteur was directed to prepare a Report on the "Special Need of the Member States for International Cooperation against Cybercrime" in the Fifty-seventh Annual Session of AALCO in 2018. For preparation of the Report, a questionnaire was prepared by the Special Rapporteur and distributed to Member States by the Secretariat. Till now, 9 Member States have replied to the questionnaire. The Special Rapporteur will submit the analysis or report concerning the questionnaire as the basis of the discussion among Member States.

The Working Group may wish to focus on the following topics arising from the questionnaire: "legislation and criminalization", "public-private partnership" and "electronic evidence"

3. Challenging Issues of International Law in Cyberspace

The developments of the internet technology have brought enormous challenges to international law in cyberspace. Some States accused the others of using ICT to interfere in its internal affairs, raising issues of the application of principle of non-interference in the cyberspace. The rapid development of the digital economy has made transborder data flow over the world more frequent, raising issues such as privacy protection and data security. Transborder data flow has become an emerging issue in the discussion of international rules in cyberspace and many States have put forward different proposals in this field. The spread of harmful content such as audios and videos of violence and terrorism have triggered public discussion of the responsibility of government and social media. Some States adopted legislation in order to strengthen the regulation and control of online harmful content.

Three subtopics will be set up under this topic: "application of the principle of non-interference in cyberspace", "data sovereignty, transborder flow and data security", and "regulating online harmful content".

With respect to "application of the principle of non-interference in cyberspace", the Working Group may wish to discuss the following issues: (1) how to clarify the exact content of "state sovereignty in cyberspace"? (2) what should be the threshold for a cyber operation be regarded as

“interference in the internal affairs”?

With respect to “data sovereignty, transborder flow and data security”, the Working Group may wish to discuss the following issues: (1) how to clarify the exact content of “data sovereignty”? (2) how to evaluate the transborder access to extra-territorial data through internet companies without permission of the States where the data is stored, the impact to the sovereignty of the States where the data is stored and the international judicial assistance and enforcement cooperation? (3) what are the basic principles on the transborder data flow? (4) how to evaluate the fact that more and more states are adopting legislation on data localization and its relation with transborder data flow?

With respect to “regulating online harmful content”, the Working Group may wish to discuss the following issues: (1) what are the standards of defining “online harmful content”? (2) what principles and rules should be applied in regulating online harmful content?

4. Peaceful Use of Cyberspace

This topic has been discussed in the Fifty-fourth, Fifty-fifth, Fifty-sixth and Fifty-seventh Annual Sessions. Considering the emerging situations in this field, Member States may wish to focus on the following issues: (1) in what specific way the Article 2 (4) and Article 51 of the Charter of the United Nations can be applied in cyberspace, and what are the standards to define the “use of force” and “armed conflict” in cyberspace? (2) how to evaluate the “defense forward” strategy adopted by some States and its impact on international law in cyberspace? (3) how to assess, under international law, the legality of the cyber operations against other States’ critical infrastructure such as national grid? How to better regulate such operations through international law? (4) While state practices of "cyber warfare" are still rare, is it time to discuss whether and how international humanitarian law (the law of armed conflict) can be applied in cyberspace?

5. Adoption of the report

Under this agenda, the report of the Working Group will be adopted based on the discussion.