Brief Overview of UN Deliberations on Cybersecurity and Cybercrime

ICANN Government and Intergovernmental Engagement Function

Veni Markovski
GE-001
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Historical Background on ICANN UN Engagement

ICANN's Government and Intergovernmental Organizations (IGOs) engagement team (GE) has been covering the discussions at the United Nations in New York since 2014.
We observed during the deliberations of the General Assembly (UNGA) resolution on ICT for Development in 2014 and during the WSIS+10 negotiations in 2015, that the diplomats at the UN are discussing issues, which either touch directly on ICANN's remit, or have the potential to do so. Over the last five years a lot of different proposals have been circulating at the UN, among them: to change the Internet governance model from its original multistakeholder (WSIS Tunis Agenda) model towards a more multilateral one; or to pass texts in UNGA resolutions, which would have called upon ICANN to change its bylaws, etc.

After reviewing different options for addressing these issues and UN discussions, ICANN's GE decided, in addition to the active monitoring of these resolutions and discussions, to start a multi-year educational effort, which would include regular workshops and seminars for diplomats at the UN, as well as increased engagement with the relevant UN agencies, in order to provide factual information to the people, who are negotiating all these resolutions. An example of this engagement was the 2018 visit of the ICANN President and CEO Goran Marby to the UN and his meetings with the UN Secretary-General and other high-level officials, his speech to the UN Science, Technology & Innovation Forum for the Sustainable Development Goals, as well as his briefing with about 60 diplomats from different Permanent Missions.

GE has additionally performed a number of such briefings and workshops each year, hosted by different permanent missions, focused on different technical issues by bringing to the UN some of the key experts in the area of technical functioning of the Internet, and security of the DNS.

Cyber discussions at the UN

The cybersecurity-related discussions at the UN have undergone a paradigm shift in 2019. While previously there has been only one process for cybersecurity discussions, within the Group of Governmental Experts (GGE), in 2020 there are three separate cyber-related processes underway at the UNGA: the GGE, the Open-Ended Working Group (OEWG); and the Open-Ended ad hoc intergovernmental committee of experts (OECE), charged with conducting a comprehensive study of cybercrime. Some discussions related to trust and security continue to take place at the Internet Governance Forum (IGF), and some are within the follow up process after the UN High-Level Panel on Digital Cooperation (UNHLPDC) published its report[1]. This reflects an increasing concern among member states and a consistent trend to move the cybersecurity conversations from other UN agencies and locations to the UN headquarters in New York.

The newly established OEWG and the latest GGE were created in 2018 with resolutions by the UNGA. Both groups started their actual work in the fall of 2019, and both groups are supposed to issue reports. The OEWG was founded by UNGA resolution 73/27[2], with a goal, among others, "to continue, as a priority, to further develop the rules, norms and principles of

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[1] See the report here.
[2] See the resolution here.

responsible behaviour of States" in cyber[3]. These norms are described in earlier iterations of the GGE which issued reports in 2010, 2013 and 2015. The 2019 GGE was created by UNGA resolution 73/266[4], with the goal, among others, "to address existing and potential threats in the sphere of information security, including norms, rules and principles of responsible behavior of States, confidence-building measures and capacity-building, as well as how international law applies to the use of information and communications technologies by States."

In 2019 UNGA created a third group, the OECE with only one goal – to work on drafting a UN Cybercrime Convention.[5] This group will have its first organizational meeting in August 2020.[6] As of now there's no more information for that group.

Current Situation (February 2020)

The GGE consists of experts, representing 25 countries: Australia, Brazil, China, Estonia, France, Germany, India, Indonesia, Japan, Jordan, Kazakhstan, Kenya, Mauritius, Mexico, Morocco, Netherlands, Norway, Romania, Russian Federation, Singapore, South Africa, Switzerland, United Kingdom, United States and Uruguay. It is chaired by Ambassador Guilherme Patriota from Brazil. The GGE is not an open group, only its members can participate in its sessions; the experts, however, can bring additional staffers from their respective countries.

In December 2019, the GGE had a 2-day "informal consultations" of the 25 experts with the rest of the member states. The GGE consultations were followed by the group normal 5-day session. During the GGE "informal consultations" some member states, which do not have experts at the GGE, expressed opinions that the work of the GGE is less inclusive, compared to the work being performed by the OEWG; one of the arguments was the number of statements by non-governmental stakeholders during the "informal consultations" of the OEWG (see more below). The second session of the GGE took place February 24-28 in Geneva.

As mentioned above, previous GGEs have produced several reports[7], which describe desirable behavior of states in cyberspace; these norms are non-binding, but they give some idea about the thinking of member states vis-à-vis cybersecurity.[8]

The OEWG, though the name may mislead the inexperienced reader, is not open for *everyone*, but only for *all UN member states*, and it works under the rule of procedures of the UNGA. It has had two substantive sessions – in September 2019, and February 2020, and it will have one more in July 2020. It has also held one informal multistakeholder consultation in December (114 statements were read by as many NGO participants). There will be two more intersessional informal consultations with member states, following the publication of the first draft of the

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[3] For this paper we use the term cybersecurity, but the UN uses the term "developments in the field of information and telecommunications in the context of international security".
[4] See the resolution here.
5 In this paper we use "cybercrime convention", the UN uses "comprehensive international convention on countering the use of information and communications technologies for criminal purposes."
[6] See the resolution here.
[7] See the GGE reports from 2010, 2013, 2015.
[8] Additional reading can be found at the GGE web site, see for example this report which details the outcome of consultations of the GGE did in 2019 around the world.

chair's report, expected in early March 2020. The chair of the OEWG is the Swiss Permanent Representative to the UN Ambassador Jurg Lauber.

During the substantive sessions of the OEWG thus far some key issues have become clearer, among others: that there's no agreement with regards to applicability of existing international law in cyberspace, and that there are competing views about the behavior of states in using ICT for offensive attacks. It was mentioned that more than 1/3 of all member states have shown they have offensive capability in cyber, and there were calls for more transparency in releasing information by member states about their military cyber skills. While these issues do not relate to ICANN's core functions, they provide some ideas as to the general direction of the discussions.

A component of the discussions of the OEWG, which has also been discussed in previous GGEs, has been the critical Internet infrastructure. While the need to protect critical Internet infrastructure from attack is not a central topic in the current deliberations, an important moment for ICANN came during the first OEWG session in September 2019, when China[9] provided a written submission which included the following statements:

> *"The current unbalanced distribution and unjust management system of critical Internet resources pose grave security threats to the smooth functioning of critical infrastructure."*

and

> *"States should participate in the management and distribution of international Internet resources on equal footings."*

In the OEWG February session China also stated[10]:

> *"Countries should build multilateral democratic and transparent Internet governance system"*

and

> *"Administrators of key internet resources, such as root servers, should not be controlled by any government."*

During the February OEWG discussions, some member states expressed their position that a new mechanism for dealing with cybersecurity issues was needed, and that it should be multilateral and within the UN system. Some have also expressed the view that a new OEWG should be established, with a longer term (the current one is one year and ends this fall), and that non-governmental stakeholders should be even more actively engaged.

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[9] See its contribution here.
[10] As heard during the meeting and confirmed with the video recording.

Expected outcomes in 2020

OEWG

While it is too early to estimate the chance of having an OEWG consensus report (this is the requirement as per the UNGA resolutions; that means that even one member state could derail the publishing of the report), there will be enough drafts and discussions so that we will be able to see where the OEWG is going.

A number of member states have expressed their desire to have the mandate of the OEWG renewed, so this might be one outcome (regardless of whether there will be a report or not). Some experts have shared their opinion that the OEWG could become a permanent working group.

One of the major challenges in front of the group is the question of applicability of existing international law in cyberspace.

GGE

The GGE report is due in 2021. It will be interesting to see if they will have a second round of informal consultations later this year, and if they do, whether the existing work of the OEWG would in any way impact the countries' statements in the GGE consultations.

OECE

The first organizational session of this group[11] will be in August 2020, during which it will agree on the modalities for its further activities to be submitted to the UNGA for its consideration and approval.

Business sector engagement at the UN and other relevant information

In 2020 Microsoft announced[12] the establishment of a "New York office to work with the United Nations". An important detail is that it will be headed by John Frank, the former head of government relations Europe for Microsoft who has moved from Brussels to take up the UN portfolio. This is a strong continuation of previous Microsoft engagement efforts with the UN in Geneva and in New York.

In preparation for the December 2019 OEWG intersessional "informal consultations" meeting Microsoft sponsored[13] a dedicated website for the on-line registration for that meeting, and published an 8-page paper,[14] titled "Protecting people in cyberspace: the vital role of the UN in 2020". Microsoft had a relatively large delegation to the OEWG intersessional informal

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[11] See the resolution for the establishment of the OECE here.
[12] See Microsoft blog here.
[13] See it here.
[14] Download from here.

consultations and intervened several times. Microsoft is also very active through their representative on the IGF Multistakeholder Advisory Group (MAG).

Another relevant piece of information is the continuous work, following the issue of the report of the UN High-Level Panel on Digital Cooperation[15] - virtual roundtables groups, which are being convened under the auspices of the Office of the Special Adviser, Under-Secretary-General Fabrizio Hochschild. There are eight such groups. ICANN does not participate in these discussions.

Conclusions

While these UN deliberations are still in the early stages and their outcome – at least for the time being – is unclear, for the time being it seems more likely that the OEWG will issue its report later this year. The report will have to be non-controversial, so that it will be accepted by all member states, because as per the UNGA resolutions for the establishment of the group, a consensus is required.

The report could serve as a foundation for future work at the UN and could also pave the way for countries to start looking into national legislation, which will take into account portions of the reports, as best suited for each nation's needs. This won't be a precedent, as we have seen[16] in the past that national law enforcement has used for example the ITU Constitution in order to shut down websites. It is precisely this history of countries using UN- and UN-agencies resolutions and other relevant documents for reasoning or explaining[17] changes in national legislation, which is one of the justifications for the ongoing monitoring of the UN- and UN-agencies discussions, and the continued explanatory work with the missions.

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[15] See their web site here.
[16] See news story here (in Russian)
[17] See for example here. (requires a password)