

“Why do we need a Geneva Convention of cyberspace”

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The Internet, the result of a technological evolution in a particular geopolitical and economic context, gave birth to the cyberspace. This digital environment, which extends our physical and daily reality, is structured by information and communication technologies, the services offered and the uses we make of them.

Like land, sea, air or space, cyberspace is a common environment that must be shared and regulated. Since its origins, various mechanisms set up on the margins of international institutions have enabled the overall coordination of its technical development.

To the extent that the Internet has global coverage and cyber attacks do not stop at national borders, regional or bilateral agreements are insufficient. Cyberspace requires effective coordination, cooperation and legislation at the local level, while being compatible at the international level. The current question is how to establish such rules and under the umbrella of which institutions?

Only a multi-governmental approach of international scope within the framework of the United Nations seems capable of defining and putting in place such a supranational regulation instrument. Otherwise, it is feared that anarchy or the law of the strongest will be imposed in the cyberspace. Given the number and intensity of cyber attacks practiced by all kinds of actors independently of their motivations, it becomes urgent to specify unacceptable practices and to set the responsibilities of each.

Like the Geneva Declaration on the Rights of the Child of 1924, it is possible to imagine a text that recognizes and affirms the existence of specific rights for Internet users and specifies the responsibility of the cyberspace actors towards humanity and future generations. Paraphrasing the 1924 Declaration, a non-binding and short Cyberspace Geneva Declaration could, for example, reaffirm in its preamble that “men and women of all nations recognize that humanity must give cyberspace the best it has, affirming their duties, apart from any consideration of race, nationality, and belief.”

Such a Declaration would serve as a basis for a future International Cyberspace Treaty, which would constitute the legal instrument for prosecuting offenses, regardless of their place of origin or where they were realized (which is not currently the case). Thus, cyber attacks against human life, peace, national security or the stability of States would be punishable under

international law, even if they are not reprehensible at a national level, which is for instance the case when they emanate from “digital paradises.”¹ Such a treaty would allow the prosecution of those responsible for cyber attacks, regardless of their geographical location.

These recommendations and observations have already been made by a group of experts following the initiative of the *Global Cybersecurity Agenda (GCA)* of the International Union of Telecommunications, which was launched in 2007². Thus, under the aegis of both Norwegian judge Stein Schjolberg, *Chairman* and Swiss professor Solange Ghernaoui, *work area leader* of the GCA, decisive and guiding international publications have emerged and enriched over the last 10 years³. These initiatives have yet to be completed and finalized within the framework of the United Nations. In particular, they must be carried out by the international community in order to translate a strong political and economic will, the only one capable of motivating a real commitment of all States.

A simple document alone can't curb conflicts in cyberspace, but it would be decisive for raising States' awareness, for defining the guidelines for the development of the cyberspace and its ecology, and for developing confidence-building measures. Identifying the limits of acceptable practices would encourage the denunciation of abusive uses of information technologies and would be a first step towards more stability and security online as well as offline.

It would be a shame to leave the rules of the game and the control of cyberspace to the hands of the IT and Internet giants alone. There is great confusion in the approaches, aims and motivations of the actors, especially since Microsoft asked in February 2017 that civilians be better protected in cyberspace. It is in San Francisco during a commercial convention on security⁴, that Brad Smith, Microsoft's legal officer, proposed a Geneva Digital Convention⁵ based on the 1949 Geneva Convention for the protection of civilians in times of war⁶.

¹ By analogy with tax havens, digital paradises designate countries where regulations and measures to combat cybercrime are weak or non-existent.

² <http://www.itu.int/en/action/cybersecurity/Pages/gca.aspx>

³ Stein Schjolberg & S. Ghernaoui “*A global treaty on cybersecurity and cybercrime; A contribution for peace, justice and security in cyberspace*”, first edition, 2009. <http://www.cybercrimelaw.net/Cybercrimelaw.html>

S. Schjolberg “Draft United Nations Treaty on an International Criminal Court or Tribunal for Cyberspace” (10th Edition, June 2015)

http://www.cybercrimelaw.net/documents/Draft_Treaty_text_on_International_Criminal_Tribunal_for_Cyberspace.pdf

S. Schjolberg, S. Ghernaoui “A Geneva Convention or Declaration for Cyberspace: A global framework on cybersecurity and cybercrime, and a contribution for peace, security and justice in cyberspace” VFAC Review, No. 12, October 2016, Korean Institute of Criminology. <https://eng.kic.re.kr>

⁴ <https://www.rsaconference.com/events/us17>

⁵ <https://blogs.microsoft.com/on-the-issues/2017/02/14/need-digital-geneva-convention/#sm.0001eqppgm6p5ezjujklfpzx0tj59>

⁶ <https://mscorpmedia.azureedge.net/mscorpmedia/2017/03/Transcript-of-Brad-Smiths-Keynote-Address-at-the-RSA-Conference-2017.pdf>

While it is obviously commendable that digital giants such as Microsoft are concerned about global cybersecurity, it is permissible to question their legitimacy and independence when they offer their good offices to define the global rules of digital governance. The fact that these multinationals act as gendarmes of the digital world, or as their assistants, as the equals of the States and the International Organizations, creates situations with very high risk of conflict of interest.

The risk is all the greater as the underlying trade issues are huge and digital giants are already in confrontation with States on matters related to the confidentiality of the data they possess on people of interest to legal authorities and police. Between citizen and consumer rights, corporate law and state law, the context is as complex as it is explosive.

All the speeches can't make us forget the economic reality and strategies of influence of the IT and telecommunication giants. Their economic power and their political power are commensurate with the economic and geo-strategic stakes associated with the digital world. We have to deal with them, consult them, but not let them impose their regulations. In digital, as in so many other fields, it is the responsibility of the politics to regulate multinationals, and not the other way around.

The concept of neutrality sounds false when it is advanced by providers, suggesting that technology is neutral, while infrastructures, algorithms, services and data are created, imposed and controlled by multinationals, whose only objectives are profit, growth, monopolistic domination and continuity.

It would be unfortunate if Switzerland did not participate in the promotion of this new instrument in the service of peace which could be a Geneva Declaration of Cyberspace. In this area, Switzerland could play a relevant and important role, notably through its external security policy, whose 2016-2019 strategy regards cybersecurity as an instrument of international peace and stability. Moreover, the promotion of such a Declaration would promote the International Geneva as a credible and privileged actor of peace and cybersecurity in the twenty-first century, just like it has already served the peace in the world in the twentieth century.