TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS

Tallinn Manual 2.0 expands on the highly influential first edition by extending its coverage of the international law governing cyber warfare to peacetime legal regimes. The product of a four-year follow-on project by a new group of 19 renowned international law experts, it addresses such topics as sovereignty, State responsibility, human rights, and the law of air, space, and the sea. *Tallinn Manual 2.0* identifies 154 'black letter' rules governing cyber operations and provides extensive commentary on each rule. Although *Tallinn Manual 2.0* represents the views of the experts in their personal capacity, the project benefited from the unofficial input of many States and over 50 peer reviewers.

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TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS

Prepared by the International Groups of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence

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FOREWORD

TOOMAS HENDRIK ILVES
President of the Republic of Estonia

In 2007, several Estonian private and public e-services fell victim to an onslaught of malicious cyber operations. These coordinated attacks focused the international community's attention on the severe risks posed by the increasing reliance of States and their populations on cyberspace. In retrospect, these were fairly mild and simple DDoS attacks, far less damaging than what has followed. Yet it was the first time one could apply the Clausewitzean dictum: War is the continuation of policy by other means.

The attacks also sped up the establishment of the NATO Cooperative Cyber Defence Centre of Excellence (NATO CCD COE) in Tallinn. Estonia is honoured to host and contribute to this world-class think tank and training institution that is a valued partner for NATO, Allies, and the international community. Among the NATO CCD COE's first activities was to commission a major study on cyber warfare conducted by an international group of legal experts. The experts examined how international law governs the use of cyber force by States and the employment of cyber operations during an armed conflict. The resulting Tallinn Manual has become a guidebook for governments around the world as they assess the application of international law in such situations.

Upon publication of the Tallinn Manual in 2013, the NATO CCD COE launched a follow-on research effort to expand the Manual to encompass the international law governing cyber activities occurring in peacetime. The outcome is by far one of the most comprehensive analyses of international law applicable to cyber operations. The publication you are holding covers topics ranging from space law and jurisdiction to international human rights law, as well as an analysis of conflict law from the first Tallinn Manual.

The fact that international law is often dismissed as window-dressing on realpolitik is misleading. Such an approach understates the importance of international agreements in maintaining peace and security. For liberal democracies that respect the rule of law, international law

undoubtedly shapes and bounds governments' activities. At a time when the actions of unscrupulous States and violent extremist groups continue to threaten peace and security internationally, it is even more important that such actions are countered with a strong commitment to existing international law and the values that it represents.

On the diplomatic level, governments should continue to interact in order to foster a better understanding of how international law regulates their cyber conduct. That said, these initiatives have proven to be slow and laborious, sometimes hobbled by narrow national interest and perspectives. The creation of the second Tallinn Manual has been unconstrained by politics and the book will serve as a road-map for governments as they seek greater clarity regarding their rights and obligations in cyberspace. The book will also be useful to the international community while struggling with the complexity of identifying extant cyber norms and promulgating new ones.

I am glad that the journey of the international group of experts began in my nation's capital and the understanding of international law matures under Tallinn's name. I congratulate the NATO CCD COE, the experts, and the many others scattered around the world who contributed to this trailblazing endeavour.

FOREWORD

BERT KOENDERS
Minister of Foreign Affairs of the Kingdom of the Netherlands

We find ourselves in an exciting age. Information technology has stirred innovation in an unprecedented fashion. The Internet has connected people in ways and numbers that were previously unimaginable. Knowledge and information have become public property as never before. This has proven especially true for the Netherlands, the European leader in responding to technological trends and effectively applying information and communication technologies and related skills.

All new technologies present new opportunities and challenges. As was the case, for instance, with gunpowder and the aeroplane, the same holds true with respect to digital technologies. For the Netherlands, and many other countries, our reliance on digital technology is both a boon and a bane. It fosters innovation, but increasingly also represents a point of vulnerability that can be exploited by malicious actors. In the face of this threat, we must develop capabilities to defend ourselves in a manner that preserves the international legal order. At the same time, it is the responsibility of the international community to ensure that peace, security, and stability are maintained, and that such capabilities are only used in accordance with international law.

In the past, *inter arma enim silent leges* – 'In times of war, the law falls silent' – was an oft-heard claim. More recently, some have argued that the law falls silent in the face of the challenges of the digital age. Neither assertion is correct. States have developed a body of law that regulates armed conflict, commonly known as international humanitarian law. They have also recognised that existing international law applies to the digital domain.

It is not always immediately evident how rules that were developed before a new technology existed should be applied to that technology. Yet, it is important to reach common understandings on such applications in order to promote an open, secure, stable, accessible, and peaceful ICT environment. This is something that States should debate

among themselves. Academic experts have an important role to play in informing the debate.

In 2013, that role was clearly illustrated with the publication of the Tallinn Manual on the International Law Applicable to Cyber Warfare. The manual has made a valuable and significant contribution to promoting and informing the debate among States regarding the application of international law in the cyber domain.

The scope of the 2013 manual was limited to international law on the use of force and international humanitarian law. In practice, many questions concerning the application of international law fall outside of its scope. Fortunately, situations of armed conflict are the exception rather than the rule. Most cyber activities take place in times of peace.

The invitation that the NATO Cooperative Cyber Defence Centre of Excellence extended to the experts led by Professor Schmitt to update the manual and explore the application of peacetime international law was therefore a welcome initiative. It offered a unique opportunity for exchanges and engagement between academic experts and national legal advisors.

I am proud that the Netherlands was able to facilitate these exchanges by organising a series of consultation meetings between the authors of the new manual, Tallinn Manual 2.0, and States of diverse regional backgrounds. This 'Hague Process' offered the authors of the updated manual an opportunity to gain insight into State practices, and provided States with a forum for dialogue. My intention is for the Hague Process to continue, even after the publication of the new manual.

The Netherlands has long attached great importance to promoting the development of the international legal order. In fact, our constitution explicitly cites doing so as one of the government's tasks. The international legal order provides a measure of stability, predictability, and accountability in States' international relations and is of paramount importance in preventing conflict. I believe that the application of international law to State conduct in the digital domain can serve as a bedrock for peace and security, as it does in all other domains, because technological advances have no bearing on the underlying legal principles. By facilitating the Hague Process, I am convinced that The Hague is fulfilling its role as international city of peace, justice, and security.

I have no doubt that this Tallinn Manual 2.0, like the original version, will become an important resource for national legal advisors. This is in no small part due to the high quality of the experts involved and the rigorous drafting process employed.

I am also confident that the manual will continue to play an important role in the continuing dialogue regarding how international law applies to cyber activities. Its ultimate and most important role lies in helping States reach common understandings. After all, only by safeguarding the international order can we ensure security in an open and innovative digital domain. This must be our objective, and it is one that the Netherlands remains committed to achieving.

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