Internet Regulation and the Role of International Law

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* The author would like to thank Professors J.H.H. Weiler, A. von Bogdandy and R. Wolfrum for their invaluable comments on earlier drafts of this article. All errors remain my own.
† To the memory of my father Tomás Antonio Segura Ortega.
I. Introduction

Given the "virtual" nature of its existence, the first important legal discussion about the Internet focused on its natural resistance to regulation. Despite this supposed resistance, national laws have been erected throughout the world with the aim and effect of subjecting the Internet to "real" regulation. Considering the global character of the Internet, however, International Law could be a more suitable tool for regulation in some of the various Internet-related issues. This article, therefore, aims to study the current and future roles of International Law regarding the regulation of this field.

After a short debate of the regulability of the Internet as such the article will focus on the current role of International Law with respect to the regulation of the Internet. That exercise will allow us to identify the main different national approaches to Internet regulation, as well as the existing International Law instruments stemming from those approaches. There is an array of questions related to this new technology that national laws have addressed in various forms. We would like to focus only on some substantial issues, such as freedom of speech and the fight against harmful content; the protection of intellectual property rights against piracy and the promotion of public domain information; and privacy rights and the protection of personal data vis-à-vis the commercial use of collected data. Although there are other possible questions to be discussed (education, cyber security, taxation, electronic commerce and contracts, etc.), these issues will give the measure of the differences between national laws, and will reveal the present role of International Law with respect to the Internet.

Then we shall consider some traditional International Law questions or issues relating to the Internet that have not attracted enough attention until now. First, it seems clear that the integrity of Internet facilities is a matter of national security for any country. As such, we shall determine whether a cyber-attack, in the form of a virus or otherwise, may be considered an armed attack; and if so, whether such an attack may legally trigger a nation's legitimate self-defense response, or even the collective action of the United Nations (UN). Second, because the Internet is important not only for each and every country in the world, but also because it is so crucial for the well-being of people in developed and developing countries alike, it seems fair to ask about the future governance of the Internet. In this regard, International Law may add to the discussion by introducing a very interesting concept, the concept of CHM (Common Heritage of Mankind). The analysis of this