

## **China's Views on the Application of the Principle of Sovereignty in Cyberspace**

As a basic norm in contemporary international relations, the principle of sovereign equality enshrined in the Charter of the United Nations covers all aspects of state-to-state relations, which also includes cyberspace. In practice, all States have extended sovereignty to cyberspace. The international community should, with the common well-being of humanity in mind, follow and practice the principle of sovereignty in cyberspace in line with the principles of equal consultation and seeking common ground while setting aside differences.

### **The Concept of Sovereignty in Cyberspace**

#### **I. Rights**

Sovereignty in cyberspace is the internal supremacy and external independence that States enjoy, on the basis of their national sovereignty, over the ICT-related infrastructure, entities and activities as well as relevant data and information within their territories. Specifically speaking, it includes the following rights:

·**Independence.** States have the right to independently choose their own path of cyber development and model of governance on ICT-related activities, and to make relevant Internet public policies, free from any external interference.

·**Equality.** In line with the principle of sovereign equality enshrined in the UN Charter, States have the right to participate in global governance in cyberspace on an equal footing and jointly formulate international rules.

#### ·**Jurisdiction.**

·**Legislative Jurisdiction.** States have the right to enact legislation to regulate the ICT-related infrastructure, entities and activities as well as relevant data and information within their territories, with a view to protecting their national security, public interests, and the legal rights and interests of their citizens, legal persons, and other organizations.

·**Administrative Jurisdiction.** States have the right to administer the ICT-related infrastructure, entities and activities as well as relevant data and information within their

territories according to law.

·**Judicial Jurisdiction.** States have the right to exercise judicial jurisdiction over the ICT-related infrastructure, entities and activities as well as relevant data and information within their territories according to law.

States have the right to exercise, in accordance with the universally recognized principles and rules of international law, necessary and reasonable personal, territorial and protective jurisdiction over specific ICT activities outside their territories that have genuine and substantial connection to the States as well as over relevant ICT-related facilities, entities, data and information. In order to exercise its jurisdiction, a State may seek assistance from other States and regions in the spirit of self-restraint, comity and reciprocity.

·**Defense.** States have the right to build capacity in securing ICTs and adopt lawful and reasonable measures under the framework of the UN Charter to protect their legitimate rights and interests in cyberspace from external infringement.

## **II. Obligations**

Whether in the physical world or cyberspace, sovereignty incorporates both rights and obligations. The connectivity and interdependence among States in cyberspace all the more requires States to respect the basic norms and general principles of international law and earnestly fulfill their due obligations specified in international law while enjoying the rights derived from sovereignty.

·**Non-infringement of the sovereignty of other States.** No State shall without permission access the ICT infrastructure of another State or infringe on the network systems within the jurisdiction of another State. No State shall engage in ICT-enabled espionage or damages against other States, including mass surveillance and theft of important data and personal information.

·**Non-intervention in the internal affairs of other States.** No State shall intervene in other States' rights to survival, security and development in cyberspace. No State shall support or allow separatist forces to undermine other States' territorial integrity, national security and social stability through use of ICTs.

·**Due diligence.** No State shall knowingly allow its territory, or territory or ICT facilities,

data and information under the control of its government, to be used for ICT activities that undermine national security or interests of other States.

·**Protection.** All States have the obligation to protect lawful rights and interests of relevant entities within their jurisdiction. They also have the obligation to promote openness and freedom of cyberspace while ensuring order, security and development.

### **III. The Legal Status of Sovereignty in Cyberspace under International Law**

State sovereignty in cyberspace is a legally binding principle under international law. If a State infringes on the internal supremacy and external independence that another State enjoys on the basis of its national sovereignty over ICT-related infrastructure, entities and activities as well as relevant data and information within its territory, it is a violation of the principle of sovereignty, which will constitute a wrongful act under international law. The acts may include, among others, unauthorized penetration into the network systems in the territory or within the jurisdiction of another State, causing disruption or damage of relevant infrastructure or undermining a State's exclusive sovereign rights in cyberspace. An ICT activity may simultaneously violate the principles of sovereignty, non-intervention in internal affairs and the prohibition of the use of force. The application of this principle to a specific set of circumstances may require certain contextualization.

### **Fundamental Principles in the application of Sovereignty in Cyberspace**

#### **I. Equality**

Sovereign equality as set forth in the UN Charter is the primary principle that all States should follow in the exercise of their sovereignty in cyberspace. All States, regardless of size, wealth, or strength, are equal before the law and have the right to participate on an equal footing in international cyber affairs. Each State should be treated equally, and each State is also obligated to treat others as equals.

#### **II. Fairness**

All States should uphold the principles of fairness and justice in cyberspace and facilitate a just and equitable global Internet governance system that reflects the wishes and interests of the majority of countries, protects the legitimate rights and interests of developing countries. States should not abuse their superiority in facility, technology, system and data in the cyber domain to interfere in other States' exercise of sovereignty in cyberspace or promote unjust acts such as cyber hegemony or isolation.

### **III. Cooperation**

Cyberspace is global in nature. It is difficult for any State to achieve effective governance in cyberspace solely through its own efforts. In line with the principle of cooperation in good faith contained in the UN Charter, States should respect others as subjects of international law, follow the principle of extensive consultation, joint contribution and shared benefits, support multilateral and multi-party participation, and build a holistic governance system across multiple fields and levels to ensure the security and development of cyberspace.

### **IV. Peace**

The interests of all States are deeply intertwined in an interconnected cyberspace. States should act in conformity with the purposes and principles enshrined in the UN Charter, use the ICTs for peaceful purposes, and settle disputes by peaceful means. They should take effective measures to guard against the use of ICTs to engage in activities that undermine peace, prevent an arms race in cyberspace, and prevent and fight terrorist use of ICTs.

### **V. Rule of Law**

States should make steady progress in domestic legislation and advance the rule of law in global governance in cyberspace, uphold the authority of international law, and oppose the practice of double standards. In exercising sovereignty in cyberspace domestically, States should protect their citizens, legal persons, and other organizations' legal rights in cyberspace, as well as respect the sovereignty of other States, and comply with their obligations under international law such as non-intervention in the internal affairs of other States, and refraining from conducting or supporting ICT activities that endanger the security of other States.

## **Key Manifestations of Sovereignty in Cyberspace**

Cyberspace can be divided into the following four layers: physical layer, logic layer, application layer and social layer. Sovereignty in cyberspace is manifested in each layer.

### **I. Manifestation of Sovereignty in the Physical Layer**

States have jurisdiction over the physical infrastructure and basic ICT services within their territories. States are entitled to take necessary measures to maintain the security of the physical infrastructure according to national law and in conformity with international law. States have the right to participate in the management of and international

cooperation on the global Internet infrastructure.

## **II. Manifestation of Sovereignty in the Logical Layer**

States can independently enact or adopt the relevant technical regulations or standards while maintaining the interoperability of the Internet in accordance with their obligations under international law, .

## **III. Manifestation of Sovereignty in the Application Layer**

States can exercise their jurisdiction over the development and operation of software, protect lawful data and information, especially those related to national security, from theft or destruction in accordance with national and international law. States can regulate the dissemination of online content stored in their territories in accordance with national and international law, and restrict the dissemination of information that infringes upon public interests. States can prohibit overseas organizations from fabricating and distorting facts and disseminating online information content in their territories that seriously damages their national security and public interests. States can participate in international coordination and cooperation on cross-border data flow and information governance.

## **IV. Manifestation of Sovereignty in the Social Layer**

States can exercise jurisdiction over their Internet users and platforms, and foster a social environment suitable for the development of Internet; uphold their independent Internet governance system and participate in international cooperation to improve the Internet governance system on an equal footing. States have the right to take an equal part in the development of the global digital economy.

Respect for sovereignty in cyberspace is respect for the purposes and principles enshrined in the UN Charter. It is the basis and the prerequisite for upholding peace, security and stability in cyberspace. At the same time, when exercising sovereignty in cyberspace, States should adhere to universally recognized principles and rules of international law, respect the interconnected and interactive nature of cyberspace, and prevent fragmentation of the Internet. States should not politicize cyber security issues in the name of exercising sovereignty in cyberspace, violate prevailing international economic and trade rules or market principles, interfere with normal cooperation in ICT infrastructure and service projects. States should not use their technological, economic and political power to unfairly allocate or block important network resources, which will endanger the security of the global supply chain.