

Roundtable 4: Human Rights in Cyber Conflict

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The fourth roundtable of the symposium, Human Rights in Cyber Conflict, was moderated by Yuval Shany (Federmann Cybersecurity Research Center) and featured Asaf Lubin (Associate Professor of Law at Indiana University Maurer School of Law), Mariana Salazar Albornoz (ALAI), Tsvetelina Van Benthem (Oxford University), and Jonathan Horowitz (ICRC). The roundtable largely focused on how human rights law and international humanitarian law coexist in times of armed conflict, the positive obligations of states to protect the human rights of its citizens as it applies to cyber, and how private companies' roles in human rights.

Interplay Between Human Rights Law and International Humanitarian Law

There was a consensus amongst the panelists that international humanitarian law and human rights law are not mutually exclusive; rather, the two bodies of law live simultaneously together and are complimentary of one another. One critical distinction was raised on this point though—that human rights law only applies to states whereas international humanitarian law applies to states and non-state actors. The panelists also seemed to agree that, while human rights law is not suspended during a conflict, issues revolving around human rights and cyber should be viewed on a case-by-case basis for the foreseeable future. While international humanitarian law applies to armed conflict in the cyber realm, it is not entirely clear how human rights law applies outside of privacy and data protection. This led one panelist to call for a way to “operationalize” human rights law in conflict, particularly cyber operations.

Positive Obligations of States

The panelists further argued that one reason we must take a human rights law view toward cyber operations is that cyber operations have real human impacts. It makes sense to anchor cyber issues in human rights law. To that end, states not only have negative obligations to not harm their citizens, but they have positive obligations to take measures to protect the rights of their citizens, regardless of the threat's origin. This particularly comes into play where a third party attempts to interfere with the human rights of the citizens of a state.

Private Companies and Human Rights Law

Finally, the panelists spent time discussing how private companies, particularly tech companies, have become more involved in armed conflict in light of the war in Ukraine. Human rights violations being carried out through cyber means are often done using a private company's services. One example was mentioned of tech companies failing to take down videos of prisoners of war and thus failing to protect those prisoners' human rights. Organizations are currently having a difficult time increasing companies' awareness of their responsibilities under human rights law to take certain actions to help safeguard individuals' human rights. States are wrestling with the issue of private companies and human rights obligations and seeking a way to bind companies to specific standards to enforce respect for human rights law.