## International Cyber Law: Bridging the Gap between Academia and Practice Workshop Report

**Tuesday 29 May 2018, 13:00-17:00**

Tallinn, Estonia

## Introduction

The purpose of the workshop was to introduce the project to experts in the field and to potential users of the outputs of the project as well as to receive relevant feedback from the attendees. The project aims to fill the need for a practical toolkit, which would serve as a reliable source of reference for legal advisors and decision makers. The workshop was held under the Chatham House rule,[1] resulting in a fruitful and vibrant discussion during the workshop. The ideas discussed will form the basis for legal scenarios in the future toolkit, and also in setting up the project scope.

The workshop was convened by Dr. Kubo Mačák (University of Exeter) and by Mr. Tomáš Minárik (NATO CCD COE) with the assistance of Mr. David Komárek (Czech National Cyber and Information Security Agency). Attendees included legal practitioners, cyber security experts, and researchers from armed forces, government bodies, international organizations, and academic institutions in Europe, North America, and the Middle East.

## 1. Legal scenarios as the core of the project

The first section was led by Dr. Mačák and it was focused on a specific legal scenario, which had been sent to the participants in advance (see Figure 1). This scenario was intended as a model for those that will eventually become the core part of the toolkit. He explained that the format of scenarios was chosen because they allow one to find a "balance between academic abstraction and practical particularism". In other
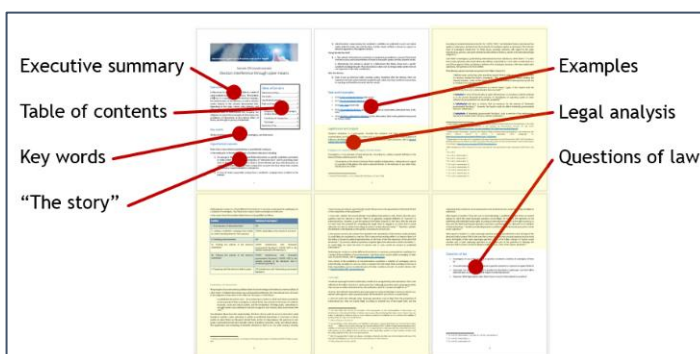


*Figure 1: Structure of the model scenario*

words, this format makes it possible to isolate key aspects of recurring events without being too tied

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[1] The following version of the Rule was used: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed". See <www.chathamhouse.org/chatham-house-rule> (accessed 29 May 2018).

down to the specific facts of those events. The participants were divided into small groups and encouraged to discuss both the substance and the form of the scenario with all the advantages and disadvantages, then they were asked to answer questions including: *Is the text helpful for legal advisors and decision makers? Is the text presented at the right level of abstraction? What could be done to improve the scenario?*

The most discussed topics concerned the target audience of the toolkit; its basic structure; the extent to which the text should attempt to provide "the right answers"; and what type of information should be given in the legal analysis. Most of the participants agreed that the toolkit should focus only on legal advisors; also that it would be useful to detail the legal analysis without necessarily tying the text to one specific answer only; and that the toolkit should also include information about the technical aspects of the scenarios and a detailed glossary.

## 2. Pre-event survey and the future format, content, and structure of the toolkit

In the second section, Dr. Mačák presented an analysis of the findings from the survey sent to the attendees in advance of the workshop. The analysis showed that the participants considered the following areas of international law as most relevant for the practical aspects of cyber operations: IHL, use of force, sovereignty and state responsibility. The most recurring issues encountered in practice were:
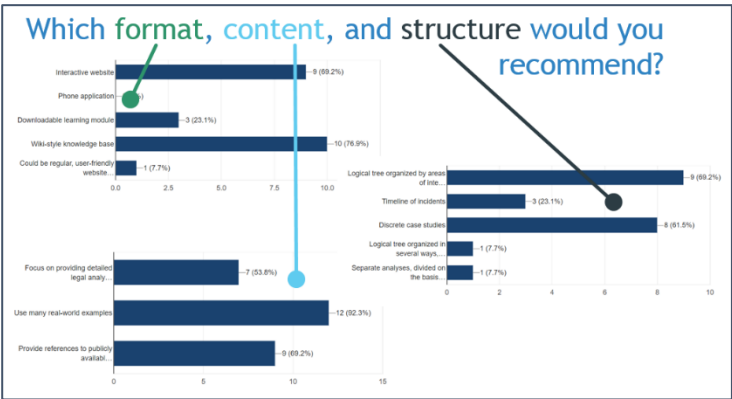
*Figure 2: Sample slide from the survey analysis*

espionage, subversion/disinformation, future attack positioning, and attribution. The survey also showed that the majority of the participants would expect the toolkit to be published in a wiki-style format, organized by areas of international law, and consisting of discrete case studies, detailed legal analysis, real examples and references to public materials (see Figure 2).

The participants were asked to engage in a "SWOT analysis" of the future toolkit, i.e., to identify its potential strengths, weaknesses, opportunities, and threats. The contributions made by the participants have included the following:

- **Strengths:** the possibility of including different views; the chance to consolidate relevant legal principles in an accessible format; the translation of academic writings to practical language.

- **Weaknesses:** trying to give the "right" answer may limit the future use of the toolkit; insufficiently defined rules on editing; and only short-term sustainability.

- **Opportunities:** novelty of the idea; giving practical guidance.

- **Threats:** volume of the toolkit (i.e., if it grows too large, it would be harder to use); need for quality control of the content; maintaining the content up to date; promotion and accessibility of the toolkit.

## 3. Practical exercises as a method of dissemination of international cyber law

The third section was led by Mr. Minárik. He presented a hypothetical case study based on the previous Locked Shields cyber defense exercises (see Figure 3). The participants were again divided into small groups, but this time every group was given different parts of the case study with specific questions and aspects to analyze. The core question to discuss was: *How could the Locked Shields exercises be used for the project and vice versa?* The participants were also encouraged to discuss whether the exercise questions were realistic, legally sound and interesting enough.
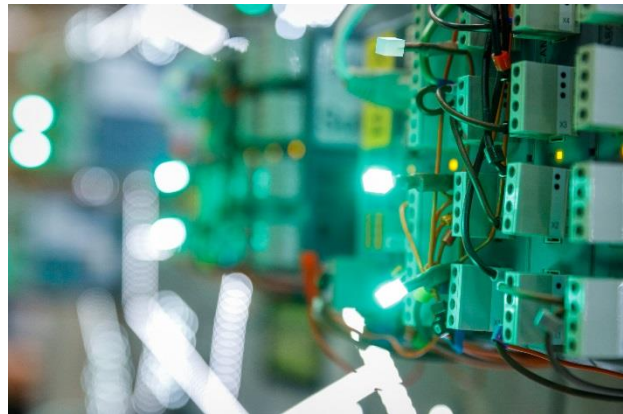
*Figure 3: Locked Shields 2018 (photo credit: NATO CCD COE)*

The majority agreed that in general the connection with Locked Shields exercises would be beneficial, albeit with some modifications. The main recommendation was to make the questions similar to those that would be probably asked in real-life situations, for instance: what is happening to us and why; what can we do and under these circumstances; what are the risks; would our measures be supported by our allies; where will this lead us to? Then, the exercises should ask that the users respond with practical legal advice that they would give to their client or commander. It was also said that old Locked Shields injects offer a unique opportunity in that one can easily compare the sample answers developed by the inject authors with those actually given by the national legal teams in the heat of the exercise.

## Evaluation and continuity

All participants have expressed their interest to remain involved in the future stages of the project. Additionally, evaluation forms returned at the end of the workshop confirmed that over 80% of the participants considered the usefulness of the content of the workshop as either excellent (31%) or very good (50%), while nearly 95% of them rated the opportunities to contribute to the workshop as well as the opportunities for networking as either excellent (75%) or very good (19%).

Some participants have added comments endorsing the need for the project (e.g. *"There is a need for a practical tool in order to serve as a reliable source of reference for non-legal decision makers, as well as for lawyers. Therefore this project is really necessary"*), while others noted the likely impact of the project on their future work (e.g. *"Many ideas and thoughts from colleagues and the idea of interactive toolkit will be incorporated into my teaching and work"*).

The project will continue with the development of the toolkit over the summer of 2018 by the project partners. Subsequently, the draft output will be subject to peer review, in which all present workshop participants will be offered to participate. Finally, the revised toolkit will be presented at a workshop scheduled to be held in early 2019 in Exeter.