

## OPEN FORUM

### *Treaty or code of conduct?*

A meeting of experts in electronics, recently held in Geneva, dealt with information and communication technologies and international security. The participants agreed that Internet-based attacks, which occur with an alarming frequency—though still on a relatively small scale—may degenerate into cyberwar, causing widespread devastation. They also agreed that to prevent such a catastrophe from happening, states must work out rules of what is allowed and what is prohibited in cyberspace, and strictly abide by them. They did not agree, however, on the kind of international document that should incorporate such rules: a treaty or a code of conduct.

An international treaty contains legally binding commitments and provides a basis for relevant national legislation. Once registered with the United Nations under Article 102 of the UN Charter, it may be submitted to the International Court of Justice in cases of disputes about the interpretation of its provisions or a breach of an international obligation. However, the treaty negotiating process is usually lengthy and the requirement of ratification may delay its entry into force for many years. Moreover, amending a treaty to render it more effective or to close the gaps that have become apparent in the course of its operation may encounter political, legal or bureaucratic obstacles, which are difficult to overcome.

A code of conduct appears easier to reach, because it can be agreed upon at a lower governmental level than a treaty, and because it may not require ratification. For the same reason it is easier to amend or to denounce. A code of conduct is not legally binding. It cannot use the services of the International Court of Justice.

I should like to suggest another approach, namely, the conclusion of a framework agreement. In such an agreement, a legally binding instrument, the "framework" would set out the objectives pursued without, however, specifying the obligations necessary to meet them. Instead, through a mechanism included in the agreement, provision would be made for the adoption of protocols. Each protocol would contain a concrete, though not legally binding, undertaking, which the parties would be expected, but not obliged, to assume. A similarly flexible procedure was used in the case of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW). Five protocols to this convention have already been concluded. My suggestion, if followed, would combine the virtues of a treaty with those of a code of conduct.

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