Cyber Space:
Between Legal and Security Challenges, Socio-economic opportunities and Moral Dilemmas
(Cyber Security, Liability and ADR)

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Intl. Regimes – Definition

- **Conception and Definition**

More structured and interlinked set of rules and provisions of international law (pre-supposing the advanced development of both institutions and instruments) may creat such a (new) practice of states which is than known as an International Regime.

Consequently, as <u>per definitionem</u>:

Any set of norms of behaviour and of rules and policies which cover relevant international issue, and facilitate substantive or procedural arrangements among the States they address, shall be defined and regarded as the International Regime.

Traditionally, Intl. Regimes have covered territories (and occurances) known as *res communis* – such as High Seas, the skies, Antarctica, Outer Space, and the like.

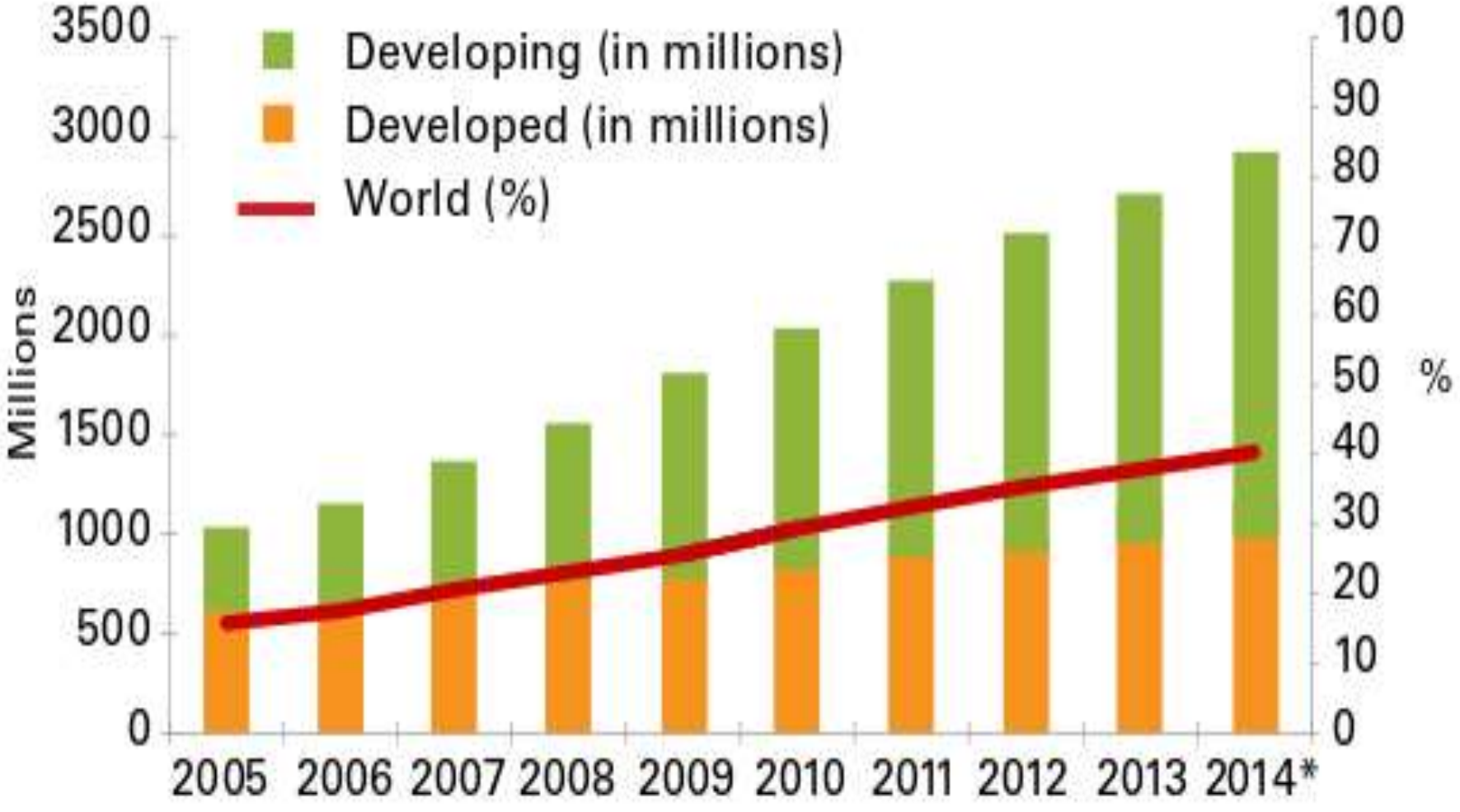
Modern Intl. Law gives the arrgument that the Regimes may cross over the territories under strict national sovereignty if and when certain domestic activities pose a wider regional (transnational) or even global (transcontinental) effect.

Areas of International Regimes

- Intl. (Sea) Traffic Regime
- Intl. Armed Conflicts (War) Regime
- Intl. Trade and Commerce Reg
- International Human Rights Re
- International Criminal (Courts)
- International Environmental Re
- EU (Regional Intl.) Regime

Cyberworld - Intro

1. According to the Internet World Usage and Population Statistics the internet has expanded at an average rate of 444% on a global level from 2000 to 2010;
2. The tremendous growth of cyberspace has also led to an increase in cybercrime which results in lost revenues, loss of sensitive data and damage to equipment.
3. Today, around 40% of the world population has an internet connection, reaching a number of some 3,5 billion users by the end of 2016.
4. The use of Internet in the developing countries will be on rise and will account for 2/3rd of the Internet users globally. (for the past 5 years, the internet users in the Developing countries have more than doubled – from 1 billion (2011) to 2,2 bil. (2016)
5. Clearly, such a rapid growth poses a threat.



Note: * Estimate

Source: ITU World Telecommunication/ICT Indicators database

Legal Framework and Institutions

Global FORAs

- ICANN
- United Nations System
  - International Telecommunication Union (ITU, SA of the UN)
  - World Intellectual Property Organisation (WIPO, SA)
- Interpol - ICPO

Regional FORAs

- OECD, EU, CoE, OSCE
- OAS, AU, LAS, GCC, SCO, SAARC, ASEAN, APEC

Global Initiatives

- G-8, WEF, and G-20 Initiative, World Social Forum

Legal Framework and Institutions

Other Regional FORAs

- …
- OAS, AU, LAS, GCC, SCO, SAARC, ASEAN, APEC

Global Initiatives

- G-8, WEF, and G-20 Initiative, World Social Forum

Common to all:

To coordinate work trans-continentally and cross-border

(Free and) Unhindered Access to internet as an elementary human right – SDG/Millennium Development Goals

UN System


PRINCIPAL UNITED NATIONS OFFICES AROUND THE WORLD
New York
UN Headquarters
OHRLLS
UNDP
UNFPA
UNICEF
Montreal
ICAO
London
IMO
The Hague
ICJ
Bern
UPU
Vienna
IAEA
UNIDO
UNODC
Rome
FAO
IFAD
WFP
Beirut
ESCWA
Gaza/Ammam
UNRWA
Tokyo
UNU
Paris
UNESCO
Washington
IMF
The World Bank Group
IBRD
IDA
IFC
MIGA
Santo Domingo
INSTRAW
Bangkok
ESCAP
Geneva
ECE
ILO
ITU
OHCHR
UNCTAD
UNHCR
WHO
WIPO
WMO
Addis Ababa
ECA
Nairobi
UNCHS
UNEP
Santiago
ECLAC
Map No 4000.2 Rev.1 United Nations
November 2000
Department of Public Information
Cartographic Section

Cyber wrongdoings

Unlawful Access, Alteration, and Function Hindering

- Virus
- Worm
- Trojan
- Bot Attacks
- Spyware

E-Fraud, Abuse of Data, Unsolicited Messages and other Related Cyber-Wrongdoings

- S p a m
  - Costs of Spam
- Phishing & Social Networks
- Identity Theft
- Authentication
- Other On-line Fraudulent schemes
- Online Fraud Criminalization and Law Enforcement

Intellectual Property Offences and Abuse of Copyrights

- **Piracy and Illegal Downloads**
- **Recording Industry – Commercial Piracy**
  - Movies
  - Music
  - Other contents
- **Piracy Criminalization and Law Enforcement**
  - National/regional
  - International
  - Enforcement – *iustus titulus*
- **Ethical considerations**

Intellectual Property Offences and Abuse of Copyrights

Piracy and Illegal Downloads

- Software piracy is the replication of software or media files for commercial purpose without authorization.
- File sharing Networks offer platforms to exchange music, movies or software, or torrents – the instant messaging tools.
  - In general it is not illegal to run a platform which enables users to share files as long as no commercial purpose can be detected. Such peer-to-peer (p2p) networks encourage copyright infringement if the services are for free. (Napster and other similar platforms slowly lost on popularity).
- Software copyright infringement (CEE, sub-Saharan Africa, LA, China) – 60% of all. Software programmers try to find new methods to prevent the duplication of the product by introducing stricter registration requirements.
- The rapid growth of the speed and outreach of internet facilitates piracy.
  - It is a generally a conflict between OECD countries behind protection of services, and the G-77 that would like to protect labor, lives and agriculture.
  - That well reflects stalemate in DDR of the WTO strategic talks.

- Software copyright infringement

Intellectual Property Offences and Abuse of Copyrights

Recording Industry – Commercial Piracy

- **Movies & Music**
  - The World Music Market consists of five major players (EMI Records, Sony, Vivendi Universal, AOL Time Warner and BMG – up to 90% of the total industry).
  - Digital piracy caused a 30% decline in revenue in 2010s. Today, 95% of all music and movie downloads are pirated (mostly Africa, CEE, China & LA).
  - A positive aspect of easy and widespread access to music files is the low barriers to entry for newcomers. An artist can quickly gain an online fan base and distribute its songs – esp using YOUTUBE tool for it (quantifiable success).
  - Motion Pictures Association of America (MPAA) and Movielabs – gathering of film distributers have –unsuccessfully– launched campaign to counterfight piracy.
- **Other contents**
  - Apple provides its music in a specific format only compatible with the company's music players.
  - This strategy was very successful for Apple.
  - Yahoo! Netflix and few other movie provides have encrypted streaming services on offer for a reasonably low fee (fee affordable & not worth of doing illegal).

Content related offences

- Child Pornography
- Xenophobia & racism
- Anti-constitutional activity
  - Terrorism and terrorism financing
- Other Banned Content
  - Cyberstalking
  - Cyberbullying – Cybermocking

Content related offences

Child Pornography

- The CoE Convention on Cybercrime defines child pornography as "pornographic material that visually depicts: a minor engaged in sexually explicit conduct; a person appearing to be a minor engaged in sexually explicit conduct; realistic images representing a minor engaged in sexually explicit conduct. (…) the term "minor" shall include all persons under 18 years of age. (…) require a lower age-limit, not less than 16 years"
- The UN definition for cybercrime states that "Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primary sexual purposes"
- There is no common legislation concerning child pornography act:
  - In relation to the standardized age of consent (should it be 18, 16 or 15);
  - A related issue is online enticement of children for 'seemingly consented' erotic acts, video-sex or live-encounters.
- the European Financial Coalition against Commercial Sexual Exploitation of Children Online has been formed in 2009
  - However, a prostitution of aged is not prohibited (only an exploitation of it)

Content related offences

- Xenophobia & racism
- Anti-constitutional activity
  - Terrorism and terrorism financing

Prescribed by National and Regional/Intl legislations; detailed Criminal procurers and exchange mechanisms within and between the legal enforcement communities

Numerous legal instruments related to

- **Xenophobia (Xenophobia monitoring centers, OHDIR, etc.);**
- **Holocaust/Nazism denial;**
- **Terrorism agitation, terrorism recruiting, terrorism financing**

The Difficulties of Litigating Cyber Crime

- Since 1990s – 2010s many new challenges to law enforcement, particularly due to the emergence of new technology. Nano-technology/robotics; Bio-informatics, etc. One such issue is cyber crime
  - **Hard to establish laws (scope in in a good time);**
  - **Attribution and detection of wrongdoings hard to establish;**
  - **Apprehend and punish perpetrators (change of physical place and a problem to select applicable national legislation);**
  - **Work viable strategies on early prevention and detection.**
- **Cyber space challenge is like an environmental one; requires an inter-disciplinary approach, which heavily leans of research & knowledge.**
- **While number of cyber wrongdoings increases, number of litigation cases is dropping (US & EU) per annum for 5%**
  - **Sophistication, transnationality and speed of crime;**
  - **Bad experience with the burden of proof, cost and length of previous litigations;**
  - **data breach and privacy violation lawsuits are increasingly settled out off court, and class action lawsuits – esp. in *ex private* but also in *ex officio* litigations;**
  - **Self-indictment & whistle-blowing – as out-of-court settlements;**
  - **Rewards for capture of most notorious cyber criminals (esp. hackers) – is additional reason for a relative drop in number of litigations.**

Concluding... by recommendations !

Having in mind that I myself wrote two books on the issues and that I serve as the Permanent Representative to the UN in Geneva with a regular access to all events and documents of the UN's SAs carrying the tasks related to the Cyber space – ITU and WIPO, as well as the fact that I am elected Arbiter and Mediator before several National Arbitration Chambers of the ASEAN countries including the Indonesian BANI, I thought of the following:

- Seminars and workshops related to sensitisations of general and specialised audience on the Cyber issues (opportunities, liabilities, risks, obligations) – Target group: members of the local and regional administration, practitioners, businesses and academia;
- Seminars and workshops related to the adopted international regional and national legislation and its enforcement – for the local administration, Bar, judiciary and other selected practitioners and academia;
- Seminars and workshops related to the ADR (Alternative Dispute Resolution mechanisms) for local business, practitioners, judiciary, administration.

The venue: UGM (eventually with the BANI, although not a must). Speakers: experts from UGM, national and international (from RI & out of Geneva).

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Thank you !