

# CYBER STABILITY CONFERENCE

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## **Use of force in «cyberspace» and lawful reactions by the injured States**

*Prof Vera Rusinova  
National Research University Higher School of Economics*

# The OEWG Chair's Summary (2021)

## Para 18:

“While recalling that international law, and in particular the Charter of the United Nations applies in the use of ICTs, it was highlighted that certain questions on how international law applies to the use of ICTs have yet to be fully clarified. Some States proposed that such questions include, inter alia, the kind of ICT-related activity that might be interpreted by other States as a threat or use of force (Art. 2(4) of the Charter) or that might give a State cause to invoke its inherent right to self-defence (Art. 51 of the Charter).”



# UN Charter

## Article 2.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.



# **Use of force in «cyberspace» and lawful reactions by the injured States**

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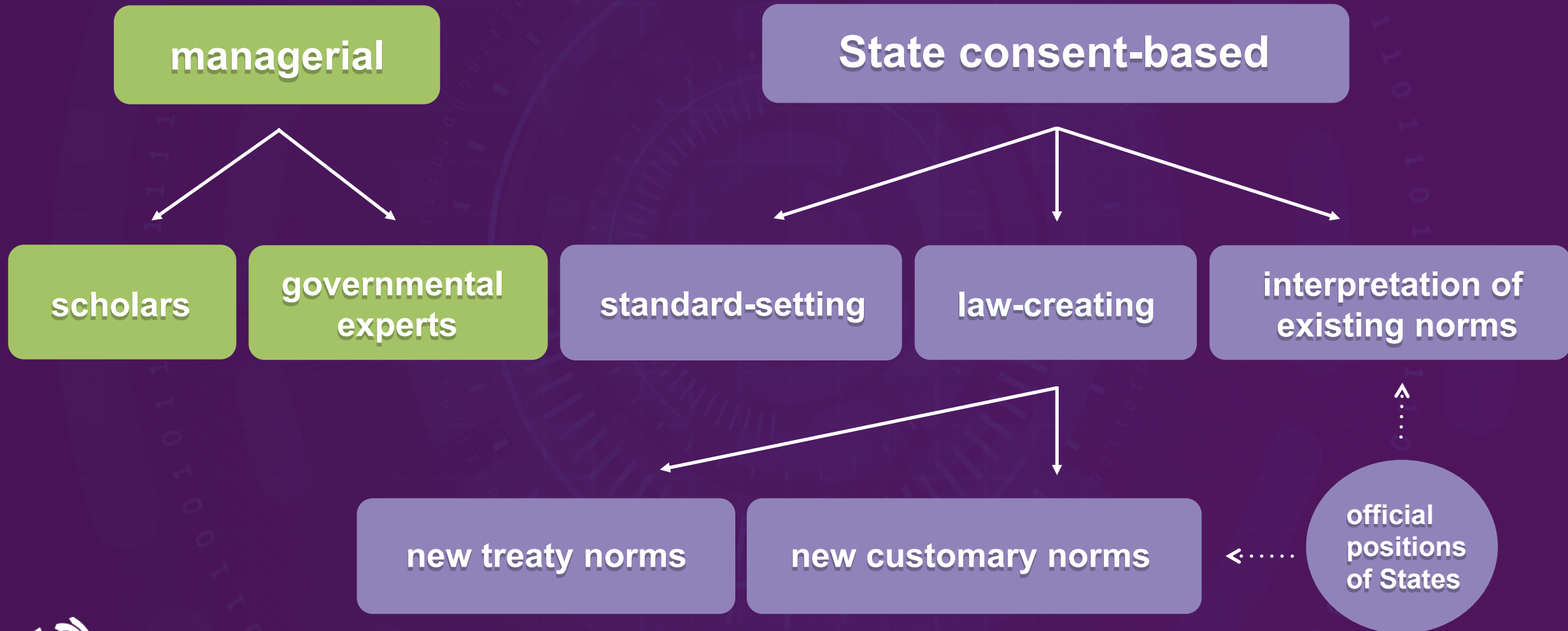
- I. Mapping the legal discourse**
- II. Problems surrounding the endeavours to build up a consensus**
- III. The legality of the reactions of affected states to the harmful use of ICTs**
- IV. Possible ways to find a compromise**





# Use of force in «cyberspace» and lawful reactions by the injured States

## I. Mapping the legal discourse



## **II. Problems surrounding the endeavours to build up a consensus**

- 1. An ontological problem (framing)**
- 2. Limits of the analogy of ITCs activity with kinetic attacks**
- 3. A reference to the 'scales and effects' approach**
- 4. Extention of the scope of Art. 2 (4) of the Charter beyond the analogy with kinetic attacks**



### III. The legality of the reactions of affected states to the harmful use of ICTs

- **practice of States:**  
unilateral coercive measures, the expulsion of diplomats, criminal indictments under domestic law and 'hacking back'
- **difficulties to apply counter-measures:**
  - (1) attribution
  - (2) a duty to reach any of the standards of proof applicable in international law
  - (3) a prior notification
- **a military paradigm of the legal qualification significantly limits the possibility to resort to counter-measures**



## IV. Possible ways to find a compromise

- A need of a **universal action**
- a turn to the sessions aimed at finding a **common consensus**
- **general principles:**  
universality, inclusiveness, transparency, deliberation and expertise
- **the possible formats:**
  - the 6th (Legal) Committee of the UN GA
  - an expert legal group in the framework of the OEWG





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