

# 网络主权：理论与实践

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纵观世界文明史，国家主权的含义因时而变、不断丰富。人类先后经历了农业革命、工业革命、信息革命，每一次产业技术革命，都给国家主权的内涵外延带来巨大而深刻的影响。农业时代，人类活动空间主要集中在陆地，国家主权的重点在于捍卫领土完整。工业时代，人类活动空间从陆地拓展到了海洋、天空、太空，国家主权的范围也随之延伸扩展。进入信息时代，网络空间与人类活动的现实空间高度融合，成为了现代国家的新疆域、全球治理的新领域，网络主权由此而生。

主权国家是开展网络空间活动、维护网络空间秩序的关键行为体。《联合国宪章》确立的主权平等原则是当代国际关系的基本准则，覆盖国与国交往各个领域，其原则和精神也适用于网络空间。实践中，各国都将国家主权延伸适用于网络空间，但对在网络空间行使主权的理念和具体做法仍存在不同认识。为推动全球互联网治理朝着更加公正合理的方向迈进，构建网络空间命运共同体，国际社会应坚持以人类共同福祉为根本，维护以联合国为核心的国际体系，秉持网络主权理念，平等协商、求同存异、积极实践。

## 一、网络主权的概念

网络主权是国家主权在网络空间的自然延伸，是一国基于国家主权对本国网络主体、网络行为、网络设施、网络信息、网络治理等所享有的最高权和对外的独立权。具体而言，主要包括以下权利：

### （一）独立权

主权国家有权自主选择网络发展道路、网络管理模式、制定网络公共政策，不受任何外来干涉。

### （二）平等权

按照《联合国宪章》的主权平等原则，主权国家有权平等参与网络空间国际治理，共同制定国际规则。

### （三）管辖权

1. 立法规制权。主权国家为保障国家安全、社会公共利益，保护公民、法人和其他组织的合法权益，有权对本国网络设施、网络主体、网络行为、网络信息等制定法律法规。

2. 行政管理权。主权国家为维护良好的网络空间秩序，有权依法对本国网络设施、网络主体、网络行为、网络信息等进行管理。

3. 司法管辖权。主权国家有权依法对本国网络设施、网络主体、网络行为、网络信息等进行司法管辖。

必要时，主权国家可就发生在境外、但对本国合法权益构成严重侵害或重大威胁的网络行为向相关国家和地区寻求司法协助。

### （四）防卫权

主权国家有权在《联合国宪章》框架下采取合法合理措施，维护本国在网络空间的正当权益不受外来侵犯。

## 二、行使网络主权的基本原则

### （一）平等原则

《联合国宪章》提出的主权平等原则，是各国行使网络主权时应遵循的首要原则。主权国家无论大小、强弱、贫富，在法律上是平等的，都有权平等参与网络空间国际事务，也有权受到他国的平等对待，更有义务平等对待他国。

### （二）公正原则

各国应坚持网络空间的公平正义，推动互联网治理体系向公正合理的方向发展，使其反映世界大多数国家的意愿和利益，尤其是要维护好广大发展中国家的正当权益，确保网络空间的发展由各国人民共同掌握。

### （三）合作原则

网络空间具有全球性，任何国家都难以仅凭一己之力实现对网络空间的有效治理。基于《联合国宪章》所提倡的“善意合作”原则，各国应尊重他国的国际法主体地位，秉持共商、共建、共享的理念，坚持多边参与、多方参与，打造多领域、多层次、全方位的治理体系，致力于维护网络空间的安全与发展。

### （四）和平原则

网络空间互联互通，各国利益深度交融。各国应遵守《联合国宪章》的宗旨与原则，和平利用互联网，以和平方式解决网络争端。各国应采取有效措施，防范利用信息通信技术从事破坏和平的行动，防止网络空间军备竞赛，预防并打击网络恐怖主义，维护网络空间的和平与安全。

### （五）法治原则

各国应不断完善国内立法，推进网络空间国际治理法治化，共同维护国际法的权威性，反对双重标准。各国依法行使网络主权，对内保护本国公民、法人和其他组织在网络空间的合法权利，对外尊重他国网络主权，遵守国际法，不得利用网络干涉他国内政，不得从事、纵容或支持危害他国国家安全的网络活动。

## 三、网络主权的实践进程

当前，网络空间的发展对传统政治、经济和社会治理结构带来巨大挑战，网络空间国际法和各国相关法律法规尚不完备。网络主权原则的提出，进一步明确了各类主体的权益，有助于规范政府、国际组织、私营部门、研究团体、社会组织、公民个人等的网络空间行为，促进国家在主权平等、互不侵犯的基础上开展有效的国际合作，为有效应对各类网络安全挑战、建立和维护网络空间良好秩序发挥重要作用。

近年来，许多重要的国际文件已经确认了国家主权原则适用于网络空间。例如，联合国信息社会世界峰会在《日内瓦原则宣言》中提出“互联网公共政策的决策权是各国的主权”；联合国信息安全政府专家组在2013年报告

（A/68/98）、2015年报告（A/70/174）中指出“国家主权和在主权基础上衍生的国际规范及原则适用于国家进行的信息通信技术活动”，“国家主权原则是增强国家运用信息通信技术安全性的根基”。

世界各国也在纷纷通过立法、行政、司法等实践活动行使网络主权，探索互联网发展道路和网络管理模式，保护本国网络免受威胁、干扰、攻击和破坏，保障本国公民在网络空间的合法权益。与此同时，网络空间互联互通的独特属性，加之各国在互联网发展水平、法律体系、文化背景等方面存在显著差异，使各国在网络空间行使主权的实践仍存在诸多现实挑战。网络主权的清晰界定、有效维护与准确行使成为国际社会共同面对的新命题，需要不断丰富发展、探索实践。

中国是网络主权原则的坚定倡导者和积极实践者。2015年，中国国家主席习近平在第二届世界互联网大会上提出，尊重网络主权是推进全球互联网治理体系变革的一项重要原则。坚持尊重网络主权原则，是构建网络空间命运共同体的前提和基础，充分体现了中国坚持以维护世界和平、促进共同发展为宗旨推动构建人类命运共同体，坚持以国家核心利益为底线维护国家主权、安全、发展利益，坚持以公平正义为理念引领全球治理体系变革的一贯立场和主张。

倡导与实践网络主权，绝不意味着封闭或割裂网络空间，而是要在国家主权基础上构建公正合理的网络空间国际秩序，共同构建网络空间命运共同体。希望各国在联合国框架下，本着平等协商、求同存异、互利共赢的基本原则，加强沟通，协调立场，在维护国家网络主权的基础上，制定普遍接受的网络空间国际规则和国家行为准则，凝聚广泛共识，贡献智慧力量，共同构建和平、安全、开放、合作、有序的网络空间。

# **Sovereignty in Cyberspace: Theory and Practice**

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Throughout the history of world civilization, the meaning of national sovereignty has changed and been enriched over time. Humanity has successively undergone agricultural, industrial, and information revolutions, which have had an enormous and profound impact on the meaning and implications of national sovereignty. In the agricultural age, human activity was mainly confined to land, so the focus of national sovereignty was on protecting territorial integrity. In the industrial age, human activity extended from land to the sea, sky, and outer space and the scope of national sovereignty expanded accordingly. In the information age, cyberspace is becoming highly integrated with the physical space of human activity to form a new territory of the modern state and a new realm of global governance. It is from this that sovereignty in cyberspace has emerged.

Sovereign states are key actors in carrying out activities and maintaining order in cyberspace. The principle of sovereign equality enshrined in the Charter of the United Nations is a basic norm of contemporary international relations. Covering all aspects of state-to-state relations, its principle and spirit also apply to cyberspace. In practice, all countries have extended national sovereignty to cyberspace, but different understandings exist around the ideas and practices for exercising it. To facilitate more just and equitable global Internet governance and build a community with a shared future in cyberspace, the

international community should, with the common well-being of humanity in mind, uphold the international system with the UN as its core, follow and practice the notion of sovereignty in cyberspace in line with the principles of equal consultation and seeking common ground while setting aside differences.

## **The Concept of Sovereignty in Cyberspace**

Sovereignty in cyberspace is the extension of national sovereignty to cyberspace. It is the supremacy and independence that a state enjoys, on the basis of its national sovereignty, regarding cyber entities, behavior, infrastructure, information, and governance in its territory. Specifically speaking, it primarily includes the following rights.

- **Independence.** A sovereign state has the right to independently choose its own path of cyber development, model of cyber regulation, and formulate Internet public policies, free from any external interference.
- **Equality.** In line with the principle of sovereign equality enshrined in the UN Charter, a sovereign state has the right to participate in global governance in cyberspace on an equal footing and jointly formulate international rules.
- **Jurisdiction**
  - **Legislation.** A sovereign state has the right to enact legislation to regulate its Internet infrastructure, entities, behavior, and information in its territory, in order to protect its national security, public interests, and the legal rights and interests of its citizens, legal persons, and other organizations.
  - **Administration.** A sovereign state has the right to administer Internet infrastructure, entities, behavior, and information in its territory according to law, so as to maintain good order in cyberspace.
  - **Judicial jurisdiction.** A sovereign state has the right to exercise judicial jurisdiction over Internet infrastructure, entities, behavior, and information in its territory

according to law.

When necessary, a sovereign state may seek judicial assistance from the countries or regions concerned to deal with cyber activities that occur within said countries or regions and seriously harm or threaten its legal rights and interests.

- **Self-defense.** A sovereign state has the right to take legal and proper measures under the framework of the UN Charter to protect its legitimate rights and interests in cyberspace from external infringement.

### **Fundamental Principles of Sovereignty in Cyberspace**

- **Equality.** The principle of sovereign equality set forth in the UN Charter is the primary principle states should follow in the exercise of sovereignty in cyberspace. All sovereign states, regardless of size, wealth, or strength, are equal before the law and have the right to participate on an equal footing in international cyberspace affairs. Each state should be treated equally, and each state is also obligated to treat others as equals.
- **Fairness.** All states should uphold fairness and justice in cyberspace and facilitate a more just and equitable global Internet governance system that reflects the wishes and interests of the majority of countries, protects the legitimate rights and interests of developing countries, and ensures the people of all countries get to decide on the development of cyberspace.
- **Cooperation.** Cyberspace is global in nature. It is difficult for any nation to achieve effective governance in cyberspace solely through its own efforts. In line with the principle of cooperation in good faith advocated in the UN Charter, one state should respect the other as an actor of international law, follow the principle of extensive consultation, joint contribution and shared benefits, support multilateral and multi-party participation, and build a holistic governance

system across multiple fields and levels to ensure the security and development of cyberspace.

- **Peace.** In interconnected cyberspace, the interests of all countries are deeply intertwined. All countries should act in conformity with the purposes and principles enshrined in the UN Charter, use the Internet for peaceful purposes, and settle cyber disputes by peaceful means. We should take effective measures to guard against the use of information and communications technology (ICT) to engage in activities that undermine peace, prevent an arms race in cyberspace, and prevent and fight cyberterrorism to maintain peace and security in cyberspace.
- **Rule of law.** All states should make steady progress in domestic legislation and advance the rule of law in global governance in cyberspace, uphold the authority of international law, and oppose double standards. In the exercise of sovereignty in cyberspace domestically, states should protect the legal rights of their citizens, legal persons, and other organizations in cyberspace, and internationally, states should respect the sovereignty of others in cyberspace, and observe the international law; states shall not use the Internet to interfere in the internal affairs of other countries or engage in, encourage, or support cyber activities that endanger the national security of other countries.

### **Sovereignty in Cyberspace in Practice**

At present, the development of cyberspace is posing serious challenges to traditional political, economic, and social governance structures. Cyberspace-related international laws and national laws and regulations are still inadequate. The principle of sovereignty in cyberspace further clarifies the rights and interests of various entities and is conducive to regulating the conduct of governments, international organizations, the private sector, research institutes, social organizations, and individual citizens in cyberspace. This principle enables countries to carry out effective cooperation on the basis of

sovereign equality and mutual non-aggression. It plays a crucial role in effectively responding to cybersecurity challenges and establishing and maintaining a sound order in cyberspace.

In recent years, many important international documents have confirmed that the principle of national sovereignty applies to cyberspace. For example, it is stated in the Geneva Declaration of Principles of the UN World Summit on the Information Society (WSIS) that “Policy authority for Internet-related public policy issues is the sovereign right of States.” The United Nations Governmental Groups of Experts (UNGGE) concluded in its 2013 report (A/68/98) that “State sovereignty and international norms and principles that flow from sovereignty apply to State conduct of ICT-related activities.” UNGGE also emphasized in its 2015 report (A/70/174) the importance of “the principle of sovereignty as the basis for increased security in the use of ICTs by States.”

States around the world are using legislative, administrative, and judicial means to exercise sovereignty in cyberspace, and are exploring path of Internet development and model of cyber regulation, to protect their networks against threat, interruption, attack, and disruption and to safeguard the legal rights and interests of their citizens in cyberspace. At the same time, the interconnected nature of cyberspace and differences between states in terms of Internet development level, legal system and cultural background are posing many practical challenges for states in exercising sovereignty in cyberspace. How to clearly define, effectively safeguard, and properly exercise sovereignty in cyberspace, are new issues that need to be addressed through continuous explorations and relentless efforts.

China is a staunch advocator and an active practitioner of the principle of upholding sovereignty in cyberspace. At the second World Internet Conference in 2015, Chinese President Xi Jinping stated that respecting sovereignty in cyberspace is an important principle in the reform of the global Internet governance system. The principle constitutes the precondition and basis of building a community with a shared future in

cyberspace. It fully reflects China's consistent position and proposition: to build a community with a shared future for mankind for the purpose of safeguarding world peace and promoting common development, to safeguard national sovereignty, security, and development interests with protecting core national interests as the bottom line, and to lead the reform of the global governance system in the principle of justice and fairness.

Advocating and practicing sovereignty in cyberspace does not mean isolation or breaking cyberspace into segments, but means facilitating a just and equitable international cyberspace order on the basis of national sovereignty and building a community with a shared future in cyberspace. States should work within the UN framework and uphold the principles of engaging in discussions as equals, seeking common ground while shelving differences, and pursuing mutual benefits. States should strengthen communication, harmonize positions, and on the basis of upholding sovereignty in cyberspace, formulate universally acceptable international rules and codes of conduct for cyberspace. States should join efforts in consolidating broad consensus and contributing wisdom and strength, so as to build a peaceful, secure, open, cooperative, and orderly cyberspace.