Open-Ended Working Group (OEWG) on security of and in the use of information and communications technologies 2021-2025
28 March – 1 April 2022

Set of draft key EU messages for Wednesday 30 March 2022

Agenda item 5: International law

Mr. Chairman,

I have the honour to speak on behalf of the EU and its Member States.

_The Candidate Countries North Macedonia, Montenegro, and Albania, the country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina as well as Ukraine, the Republic of Moldova, Georgia and San Marino, align themselves with this statement._

1. Let me start by reiterating our commitment to the application to international law in cyberspace. As one of the pillars of the framework for responsible state behaviour, the application of international law, together with norms of responsible state behaviour, confidence building measures and capacity building, provides stability in international relations in cyberspace.

2. The EU and its Member States see that the OEWG presents an opportunity to seek further understanding and consensus, building on the UN framework for responsible State behaviour, on how international law applies to the use of ICTs.

3. Current world events demonstrate that adherence to the clear rules of international law, coupled with strong enforcement measures, is crucial to preventing conflicts and human suffering, including in cyberspace. As the Russian Federation, through its military aggression against Ukraine, is grossly violating the UN Charter’s prohibition on the use of force found in Article 2(4), and the most basic rules of international humanitarian law by deliberately attacking civilians and civilian objects such as hospitals and schools, the international community must continue to act decisively to uphold and strengthen the international rule of law in all fields of inter-state affairs.
4. The OEWG as the only current forum in which all Member States are represented to elaborate on cyber issues in the context of international security therefore has an obvious responsibility to promote and clarify the application of international law in the cyber context.

5. Taking the existing acquis on international law as its starting point, the OEWG should clarify how international law applies in cyberspace. In particular, the OEWG should focus on issues of international human rights law, as well as elaborate on the application of the rules of international humanitarian law - humanity, necessity, proportionality and distinction, as noted in the 2015 and 2021 UNGGE reports – in relation to the use of ICTs by States.

6. Working on the application of international humanitarian law in cyberspace will advance transparency and protect our societies from cyber threats. The EU and Member States reiterate that such endeavour does not encourage the militarisation of, or legitimise the use of force in, cyberspace but by contrast restricts cyber operations during armed conflict by protecting civilians and critical civilian infrastructure against malicious cyber activities.

7. In light of current events it is more needed than ever to work on the application of international humanitarian law in cyberspace.

8. By focusing its discussions on how existing international law regulates States’ conduct in cyberspace, the OEWG could further identify challenges in the application of international law in cyberspace. These exchanges could also contribute all States building global capacities on international law, as well as related national legislation and policy. The EU and Member States encourage States to articulate national positions on the matter as they are working on these themselves.

9. With regard to the proposal contained in the Chair’s summary to develop legally binding measures, the EU and Member States strongly underline the need to make sure that the achievements of the international community of last decades on international security in cyberspace are not undermined, and will not be lost. The UN consensus reflected in the respective UNGGEs, the OEWG and numerous UNGA resolutions, that existing international law, notably the UN Charter in its entirety, international humanitarian law
10. Next to the significant setback in our efforts to advance international peace, security and stability such proposal would lead to, we also seriously question the feasibility of such proposal. We will hear Russia as the main advocate of such treaty during the coming week again advocating for such an international treaty in cyberspace, while they are not even adhering to the norms of responsible state behaviour in cyberspace. This behaviour seriously questions the true intention of Russia to advance such treaty.

11. The EU and its Member States view these attempts to undermine the prior achievements as destabilising and note that the OEWG should continue to build on the UN framework, exploring ways to enhance its implementation and strengthen its pillars.

12. To this end, the EU and its Member States underline the importance of multilateral discussions in the OEWG, as well as the practical implementation and capacity building in the context of regional and bilateral efforts, including by the EU and its Member States, and in view of further multilateral cooperation on practical implementation foreseen under the Programme of Action to Advance Responsible Behaviour in Cyberspace.