

UN Open-Ended Working Group on “Developments in the Field of Information and Telecommunications in the Context of International Security”

Informals, 12 July 2022, online

General views on the Zero Draft Report

Switzerland

Mister Chair,

Thank you and your team for all the efforts and the zero draft. Allow me to make some preliminary remarks:

General Position

- Switzerland welcomes the Zero draft of the annual progress report. It's a good basis for discussions at our next session.
- We particularly welcome the **action-oriented approach**, which is also in line with the proposal of the joint working paper on international law Canada submitted together with Switzerland.
- Paragraph 1 contains the important reaffirmation of the UN GGE consensus reports 2010, 2013, 2015 and 2021 and the OEWG consensus report of 2021. It reaffirms that the existing body of international law applies to the activities of States in cyberspace.
- We welcome that the results reached throughout the last UN GGE and OEWG represent the “common acquis” and form the basis of work for this OEWG. This acquis has been endorsed by the UN GA and should not be put into question again.

Threats

- Switzerland agrees with Australia, Brazil, EU, Germany, UK and others that current threats and challenges should be addressed in this chapter; in the following chapters we would show how we can address these threats. In our view threats like threats for critical infrastructures, ransomware, threats faced by humanitarian actors should be mentioned as well as the geopolitical situation.

Norms

- Generally positive; as Australia, EU and others have said it would be desirable to be more precise on which norms proposals are supported by a larger group and which are not and to give them appropriate weight.
- Regarding the question of possible new norms we could indicate in this way that some states would like to develop new norms, while others, like Switzerland, feel that the priority should lie on the implementation of the UNGGE eleven voluntary norms.
- Common understanding on ICT terms: like Canada we think we should not focus on that; in our view it is more important to share understandings or definitions of ICTs so that States are aware of other States understandings and definitions. We

could benefit here from the valuable work on this issue that Serbia is doing within the OSCE.

International Law

- As Canada we think it's a strong part of the draft
- Regarding international law, we welcome that the following key elements for a more focused and structured discussion on international law are included:
 - Convening a discussion on specific topics
 - A non-exhaustive list of topics
 - Using independent expert briefings in these discussions
- As the zero draft correctly highlights in para 1, previous OEWG and GGE reports, endorsed by the UN General Assembly should guide our discussion.
- In order to **not take a step back from the acquis, it is in our view important to include** in the interim report **a direct reference to IHL** as a key topic to be discussed.
- These are not simply cosmetic changes for us. For Switzerland IHL is a **foreign policy priority**. While we welcome the reference to the most fundamental principles of IHL, which apply in the context of an armed conflict, a direct reference to IHL in addition to the principles would better encompass the different obligations and protections stemming from that branch of international law.
- A **possible wording in §5a)** could be: “and in times of armed conflict international humanitarian law, including the principles of proportionality, distinction, humanity, and necessity.”
- Switzerland is generally supportive of the **topics mentioned in the non-exhaustive list** of para 5 a). We think that it is essential to reach common understandings on how international law applies before potentially discussing new legally-binding norms.
- As Canada, the EU, Mexico and others: we think that stakeholders, like the ICRC, have and can play a very valuable role in elucidating how international law applies in cyberspace and thereby help to reach common understandings.
- On the possibility of additional **legally binding obligations**: We think we need to work on the wording to make a distinction between topics of international law that could be discussed and the conclusions that states may draw from them, in particular whether and if so which gaps exist and how States want to deal with them. Furthermore, we would like to state clearly that, as expressed in previous sessions of this OEWG it is Switzerland's position **that we currently do not see the need for a legally binding instrument**.

Other aspects:

- **Stakeholders**: The mention of stakeholders seems rather selective. In some sections they are explicitly mentioned as a recommendation, such as under Threats or CB, in others not, such as under Norms or International Law. Stakeholders have a role in all six pillars and can make valuable contributions to

the discussions. Language should be reinforced; support statement made by Canada.

- We support the statement made by Mexico, the EU and Canada regarding the inclusion of **gender** aspects in the report.
- We support the statement made by Canada regarding mentioning more specific activities in the field of **capacity building** in international law.
- Role of **regional organisations** is very important; we welcome the proposed exchange with regional Organisations and other stakeholders on 27th of July
- On **CB**: We support statement made by Australia, Netherlands and others on avoiding duplication and the clarification of the role of Secretariat compared to existing bodies such as ITU; GFCE.
- Share concerns Australia and Thailand expressed on references to **law enforcement**; should avoid duplication of work in other processes like Cybercrime.
- On **POA**: as co-sponsor we echo the statements by the EU, Netherlands, Germany, France and others.

Conclusion

- Very good draft; we will continue to support the chair in his effort to develop an action-oriented approach and a roadmap for future work in the OEWG.
- Thank you.