

## **Preliminary informal comments of the Kingdom of the Netherlands on the zero-draft progress report of the Open-ended Working Group on security of and in the use of information and communications technologies (2021-2025)**

15 July 2022

### **General comments**

- The Netherlands aligns itself with the initial comments submitted by the European Union following the informal consultations of 12 July 2022, and offers additional preliminary views in a national capacity.
- The Netherlands appreciates the pragmatic and action-oriented approach taken in the zero-draft progress report. We agree that proposals from different delegations should be reflected in a balanced manner. In bringing this balance, we consider it important to ensure that elements that are part of the acquis – such as the applicability of international law, including the UN Charter in cyberspace – and/or or have garnered broad support are given appropriate weight and recognition vis-à-vis new proposals that have received limited support, such as the proposal to develop additional legally binding obligations.
- Such differentiation could be made by indicating whether “some States”, “States” or “the OEWG” expressed a view or agreed on a matter.
- Netherlands is of the view that every section should begin with a reaffirmation of the previous GGEs and OEWG reports, as was done in the 2021 OEWG report. This provide an important framing for the rest of the section and ensures the reader the progressive approach of our work.

### **Introduction: building on the framework for responsible State behaviour**

- In recognition of the broad consensus that the current OEWG builds on previous work, the Netherlands attaches great value to the reaffirmation of the previous GGE and OEWG reports. We therefore welcome the notion at the end of paragraph 1 that “States also recalled the consensus resolutions of the General Assembly in which States agreed they should be guided in their use of ICTs by the OEWG and GGE reports.”
- The previous OEWG report additionally stated that States were thereby “consolidating an initial framework for responsible State behaviour in the use of ICTs” (OEWG 2021, para 7). It further stated that “Building on this foundation and reaffirming this framework, the OEWG has sought common ground and mutual understanding [...]” (OEWG 2021, para 8).
- To ensure that the report appropriately reflects and builds on the progress, NL would like to see reflected in the progress report the notions (i) that by reaffirming the previous reports, States are consolidating the existing framework for responsible State behaviour; and (ii) the commitment of the OEWG to build on this framework.

### **Existing and potential threats**

- NL welcomes the inclusion of concrete action-oriented proposals to address existing and potential threats in the text, particularly with respect to measures to safeguard the technical infrastructure essential to the general availability or integrity of the internet.
- In addition, we see value in having a description of the threat landscape in this section. This provides an important context to the rest of the report and is a fundamental part of our work. Moreover, many delegations provided concrete inputs on this topic, and we would like to draw the Chair’s attention to the statements by the Netherlands under this topic during the December and July sessions.

- In particular, we believe it would be important for the OEWG to express a growing concern over malicious ICT activity that undermines logical and technical infrastructure as well as technical internet organizations essential to the general availability or integrity of the internet.

### **Rules, norms and principles of responsible State behaviour**

- NL is of the view that the recommend next steps should begin with a recommendation for States to implement the existing norms, taking into account the additional guidance on norms developed by the 2021 GGE endorsed by consensus by the General Assembly.

### **International law**

- NL welcomes the suggestion in paragraph 5a that the OEWG could convene discussions on specific topics related to international law, including with expert briefings such as from the ICRC.
- In the list of topics of international law mentioned in paragraph 5a, several Charter principles of international law, such as sovereignty, sovereign equality and non-intervention in the internal affairs of other States are mentioned. This is followed by how international law, in particular the UN Charter, applies. Since the previously mentioned principles are already part of the UN Charter, our proposal would be:
  - o To start the paragraph with a reaffirmation that international law, in particular the Charter of the United Nations, is applicable and essential to maintaining peace, security and stability in the ICT environment.
  - o It could then highlight that the OEWG could convene discussions (including with expert briefings such as from the ICRC and relevant UN-system entities) to deepen common understandings on how international law, including the UN Charter, applies.
  - o Next, it could highlight the non-exhaustive list of topics proposed by states for further topics to be discussed. In this regard, the Netherlands would like to see references in this list to (i) International Humanitarian Law (IHL) and the principles of proportionality, distinction, humanity and necessity and (ii) international human rights law. Human rights law was included in previous reports, and IHL was referenced in the 2021 GGE report, so it is something the OEWG reaffirms and should build on.

### **Confidence-building measures**

- NL welcomes the inclusion of concrete suggestions in the zero-draft report to advance CBMs, including a global PoC directory, engagement with regional organizations, as well as the recommendation to convene an intersessional meeting with stakeholders on this topic.
- Paragraph 6e refers to several elements that we do not consider part of CBMs. CBMs, as developed in previous reports as well as by several regional organizations, are aimed at promoting transparency and preventing miscalculation and unintended escalation.
- As such, the Netherlands proposes to delete references in this paragraph to "the development of common understanding on a glossary of basic terms with the aim of reducing mistrust by building common understanding; and on the use of ICTs for the economic development of States in a fair and non-discriminatory environment."
- Instead, the Netherlands suggests to refer in this paragraph to the guidance on CBMs provided in the 2021 GGE report, which includes concrete steps that can be further developed within the current OEWG around points of contact, dialogue and consultation and transparency measures.

## Capacity-building and Regular Institutional Dialogue

- We fully align ourselves with the comments made by France and the European Union, amongst others, on the reflection of the PoA in the zero-draft progress report.
- We welcome further discussions on the PoA initiative within the group, but would like to ensure the text clearly states that the PoA is not exclusively discussed within the OEWG.
- The report should build upon the reference to the PoA in the 2021 OEWG report as a key proposal for future regular institutional dialogue.
- The section should reflect the full scope of the PoA proposal as outlined in the working paper submitted to the OEWG.
- In addition to our comments on the role of the PoA in facilitating Paragraph 7a refers to “matching needs with resources” and “effective coordination” of capacity-building efforts. In addition, recommendation 3 and 7 address the sharing of “information on existing and forthcoming capacity-building programmes” and the collation of information on offers to share resources. The Netherlands would like to bring to the attention of the Chair that this is a role that the Global Forum on Cyber Expertise is currently fulfilling. It is therefore important to highlight in the text the need to avoid duplication of efforts and/or ensure complementarity with existing initiatives, such as the Global Forum on Cyber Expertise.
- Recommendation 4 of the capacity-building section refers to a UN Secretariat Focal Point for capacity-building. This is an interesting new proposal, which in our view requires further consideration, including in light of the broadly supported PoA initiative, before it is recommended by the OEWG. The Netherlands proposes that the recommendation puts forward that this proposal is part of a future discussion on capacity-building in the context of discussions on the PoA proposal.
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