

Comments by Austria on the Zero-Draft for the OEWG's Final Report

Austria would like to thank the Chair and his team for the submission of the Zero Draft which provides a very useful basis for the third substantive session. Austria also reiterates its full support for the Chair's wise leadership under difficult circumstances and fully supports the approach he has taken.

On the issue of how to proceed with our final session, Austria is ready to negotiate on the basis of the Zero Draft. A face-to-face meeting would indeed benefit negotiations, with a preference for the very last date in August/September as the one before would clash with NPT negotiations. But we are flexible as long as we find a good way to conclude this OEWG successfully. As others have said, this success would set the tone for the next process.

On the Zero Draft, Austria would like to make the following comments and suggestions, with a more detailed read-out to be submitted in writing. Austria also aligns itself with the EU Statement.

General:

Like others, we believe that the report should emphasize that we are building our discussions and the final report on the strong basis of previous GGE reports, as endorsed by the General Assembly. There is wide agreement on that. This connection to the GGE needs to be reflected more clearly in the report, especially in the conclusions and recommendations.

As a free ICT environment is essential to achieve the biggest benefits from ICTs for all and to ensure that fundamental rights can be fully exercised, we suggest to include the word "free" to the list of adjectives in Paras. 7, 13, 27, 37, 86, 96, 103, 110, 117: i.e. "...open, free, secure, stable, accessible and peaceful,..."

With respect to gender issues, some delegations seem to consider that this is not relevant to our discussions on international security. SC Res.1325, on women and peace and security, was adopted unanimously 20 years ago and it puts gender issues right into the centre of peace, security and conflict resolution. Therefore, we strongly insist – along with our CA delegate – to leave the emphasis on gender-related aspects in the report.

International Law:

- Retain the notion in para. 29 that IHL neither encourages militarization nor legitimizes resort to conflict in any domain. This is a statement of fact, but discussions have shown that we need to spell it out.
- Align the language in para. 30 with the language used in the ILC Articles on State Responsibility to keep it precise: "*It was also noted that states are to be held responsible for internationally wrongful acts committed by them, or under their direction or control, through the use of ICTs*". In the second sentence, delete the qualification „*acting on the instruction or under the control of a State*". Furthermore, in our view States must seek to ensure that their territory is not misused for the commission of internationally wrongful acts using ICTs.
- Reformulate para. 36 since the use of force is – as a rule – prohibited with the only exception being the few well-defined cases foreseen in the UN Charter. The prohibition contained in Art 2(4) UN-Charter is a *ius cogens* norm, a fundamental, overriding principle that cannot be set aside.

Suggestion: [...] it was noted that *in line with the relevant provisions of the UN Charter, disputes between States shall be settled by peaceful means in a manner that does not endanger international peace and security and that states shall refrain from the threat or use of force,*"

- Surveys and repositories would play an important role for our future discussions and building consensus on how International Law applies in the ICT security context. We therefore strongly support the inclusion of the proposal on a survey to this effect into the recommendations section, as put forward by South Africa.
- Inclusion of a reference to the respect for human rights and fundamental freedoms not only in the discussions but also in the recommendations.
- Refine the definition of the main aims of international humanitarian law in para. 29 saying that IHL „reduces risks and potential harm to both civilians and civilian objects as well as **persons no longer participating in hostilities and restricts the means and methods of warfare** in the context of an armed conflict.“
- While we understand the rationale in using the term “some states”, in para. 32, it doesn’t really reflect the fact that a **clear majority** of states expressed the view that existing international law, complemented by the voluntary, non-binding norms that reflect consensus among States, is currently sufficient for addressing State use of ICTs. We therefore suggest reflecting that in text.
- Para. 33: Since a new rule of customary international law can only develop if both elements, opinio iuris and respective state practice are fulfilled, refine by adding “**corresponding State practice**”.

Rules, Norms and Principles

- We support the notion in para. 47 that the 11 voluntary non-binding norms form the basis of the work of the OEWG since Res 70/237 was adopted by consensus, whereas the 13 norms enumerated in Res 73/27 were not. This distinction should be made clear, We will submit a proposal on how to make a clearer distinction in writing. e.g., by changing the language: “recalled that General Assembly resolution 73/27 includes a set of 13 rules, norms and principles of responsible behaviour of States *as drafted by the resolution’s initial sponsors*”.
- Since voluntary, non-binding norms of responsible State behaviour by definition must be in conformity with legally binding international law, propose to replace “*should be viewed as*” with “*must be*” in para. 46.
- Remove the title of resolution 2131 (XX), 1965 in para. 46 to bring it in line with other resolutions mentioned in the report which are also not listed with their titles.
- Add a qualifier such as “some” or “few” to para. 52 as the proposal mentioned therein was not brought forth by a large number of states.

Capacity-building+Confidence Building Measures

- Austria is very pleased with the strong focus given to capacity building in the text of the Zero Draft as it enables the implementation of the normative framework for stability in cyberspace, and to strengthen cyber security and global resilience.
- A reference to the valuable work of regional organizations on norms, capacity building+CBMs, including their cross-regional cooperation, should also be added in the recommendations section.
- Capacity building for States to develop their analysis of how international law applies to the use of ICTs is a valuable practical outcome of this OEWG.

Regular Institutional Dialogue

- We would like to highlight that the initiative of the Programme of Action of 48 states has developed out of the discussions we have had in this very OEWG over the autumn of last year in preparation of the December discussions on the future institutional dialogue. The proposal is very much rooted in this process and was certainly not “planted” in the last minute – as was suggested- by one delegation. It is not a pre-cooked plan and therefore needs further fleshing out, but it expresses the commitment of this diverse group of States to seek an open, transparent structure for our future, action-oriented work on the issues on the table now, with a focus on responsible state behaviour.
- As co-sponsors, we would suggest including a reference to the PoA into the Conclusions and Recommendations Section under the Point “Regular Institutional Dialogue”.
- As we had assumed that this OEWG would decide on the future institutional dialogue, we were surprised by the premature adoption of a new OEWG. But Austria is convinced that the PoA and the next OEWG are not mutually exclusive and ways need to be explored how we can work out a single track process that is not owned or dominated by a single state but that belongs to all UN MS, a true “Cyber-General Assembly”, as the Russian Delegation has highlighted earlier.
- Austria remains committed to working with other delegations to achieve a consensus outcome of this OEWG.