

France's response to zero-draft report from the OEWG Chair

France commends the work conducted by the Chair and its supporting teams to present a carefully crafted report. Balance between a faithful recollection of the discussion and consensus recommendations has, in our opinion, been found. Therefore, we consider the report a promising zero-draft. In view of the final report, France would like to highlight the following considerations and remarks.

I. Overview

France believes that the presentation of the report, which differentiates discussions and conclusions, manages to present the various points of views and to highlight consensus areas. Therefore, we support this approach.

France, indeed, commends the willingness to identify areas of consensus. We only regret that, at this point, no mention is being made of the Survey presented by Australia, Mexico and many States – including France. As a non-binding, guiding document, we believe that it could have been recommended, or at least, annexed to the report.

II. Existing and potential threats

Regarding this section, France only has few remarks. In paragraph 17, we believe that the wording is not clear. We believe that it is our approach that should remain technology-neutral, not the measure taken to promote responsible State behaviours – not being sure of what that concept would exactly mean. In the second sentence, we believe that instead of mentioning that ‘new application may offer development opportunities’, we could state that “new application offers development opportunities”.

Regarding the elements contained in paragraph 25, we believe that they might be more appropriate in the section on cooperation.

III. International Law

France is, overall, satisfied with this section. However, some elements could be more precise.

In paragraph 29, the notion that humanitarian law reduces the risks of harms for combatants does not seem accurate. We believe that the paragraph should be modified as follows: “*In particular, international humanitarian law reduces risks and potential harm to both civilians and civilian objects. **International humanitarian law also limits the risk of unnecessary suffering for combatants in the context of an armed conflict.***”

We also think that paragraph 30 creates confusion between the direct responsibility of a State and the due-diligence principle which, for France, are two different things. This difference should be expressed more clearly. A State is responsible for wrongful acts from groups, entities and individual that are controlled or instructed by it. In the meantime, a State has a duty not to let its territory knowingly be used by persons or entities that undertake malicious activities to the detriment of another State. Therefore, the paragraph should read as follows: “*It was also noted that under customary international law, the responsibilities of States with regard to internationally wrongful acts extend to their use of ICTs. It was recalled that States must not use proxies to commit internationally wrongful acts using*

ICTs, and should seek to ensure that their territory is not used by States or non-State actors acting on the instruction or under the control of a State to commit such acts. The responsibility of States was also noted regarding entities owned by or under the control of the State”. Another option would be to use the previous version of this paragraph with an addition: “It was also noted that under customary international law, the responsibilities of States with regard to internationally wrongful acts extend to their use of ICTs, as well as the use of ICTs by their organs or by non-State actors acting on their instruction or under their control. It was reaffirmed that States must not use proxies to commit internationally wrongful acts using ICTs, and should seek to ensure that their territory is not used by non-State actors to commit such acts”.

Regarding paragraph 34, we believe that it should be recalled that the applicability of IHL to the use of ICTs in the context of an armed conflict is not to be debated, as it has been recognized by consensus in 2015. We also believe that the modalities of how the principles of necessity and humanity applies should not be studied as if they were stand-alone principles. IHL in itself is a balance between those two principles. Discussions should be focused on how to apply the principles of proportionality, distinction and precaution in order to ensure the right balance between necessity and humanity.

Paragraph 36 is of concern for us, as we do not believe, regarding attribution, that there can be a “one size fits all” approach. We do not call into question the need to reflect the idea of a “universally accepted approach and understanding of the source of ICT incidents at the technical level under the auspices of the UN”, but we believe that the fact that some States do not agree with this approach should also be mentioned.

IV. Rules, Norms and Principles for Responsible State Behaviour

France has several comments regarding that section.

First, even though we appreciate the willingness to showcase the propositions that have been made regarding new norms, the status of the non-paper that would be annexed to the report is not clear to us. We believe that this issue should be clarified. France would be in favour of integrating to the report the elements meant to make already universally agreed norms more explicit and study the possibility of adopting the proposed new norms in the context of the recommended PoA.

Regarding paragraph 46, the mention of the resolution 2131(XX) is odd and should be either specified with some contextual elements or suppressed as we do not recall discussing those elements.

In paragraph 47, France believes that stronger language could be used when mentioning the 11 norms agreed in 2015. Though they are non-binding, they have been universally endorsed through resolution 70/237 and their specific status should be underscored. Other norms such as the norms mentioned in resolution 73/27 or the principles detailed in the Paris Call enjoy broad support from various States and can be mentioned but they are not consensual at this stage.

Paragraph 49 seems to tackle three issues which do not appear to be interconnected – the aim of this paragraph is not clear to us. The second sentence is of concern for us, as States have

never expressed that norms could create undue restrictions – though they may lead States to take actions in order to ensure national security.

Paragraph 52 rightly points out that States note the proposal for a code of conduct, but it should also mention, in our view, that some States have underlined the lack of consensus on that text since 2015.

V. *Confidence building measures*

France is, overall, satisfied with the section on CBMs as it is. France would only like to underscore that paragraph 76 is surprising as there is no official repository for PoCs at technical, policy and diplomatic level. Therefore, in our view, no State has nominated PoCs for now or, when they have done so, it has been done in a regional context.

VI. *Capacity building*

France believes that the elements presented in the section on Capacity Building are presented in a balanced and fair manner. France would only like to point out that, in paragraph 82, the mention that “States suggested that existing platforms within the UN, its specialized agencies and in the wider international community could be used to strengthen already established coordination” could be improved by adding examples of the entities we are referring to. Notably, the agencies of the UN that would be associated with capacity building could be more explicitly mentioned so as not to create any confusion regarding which bodies should intervene.

VII. *Regular Institutional Dialogue*

France welcomes the section on regular institutional dialogue and has some remarks. We think that paragraph 95 should be more precise as the OEWG is not the first platform open to all States (the GGE was the first one, even though there is a selection of experts), but rather is the first platform enabling the participation of every States at the same time.

In paragraph 99, we welcome the reference to the discussions on the PoA. We believe that to add clarity, the non-papers that have been sent to the group could be referenced.

In paragraph 100, it should be specified that it was proposed that “*the current OEWG could develop a roadmap*” for a return to a one-track process.

In paragraph 112, France strongly welcomes and supports the recommendation for a PoA. Given the number of States that have been supportive of this approach, we strongly feel that the PoA could be one of the major achievements of the OEWG. States should make sure that this inclusive and action oriented format starts as soon as possible. We believe that we could be even more specific and state that “*the OEWG recommends that States establish, as soon as possible, a programme to continue to take forward existing agreement [...]*”). France would like to underscore that the PoA could also be mentioned in the Final observation.