



Estonia's response to the OEWG zero draft report February 2021

Estonia considers the zero draft report, presented by the OEWG Chair Ambassador Jürg Lauber on 19 January 2021, to be a balanced text which reflects the range of discussions and opinions expressed by States throughout our work together. In our view, the process led by the Chair has been in keeping with this group's spirit of transparency and inclusiveness. We would like to commend Chair and his team for their tireless efforts since the beginning of the OEWG's work and express our confidence in their ability to guide this process to a substantive consensus outcome that would further pave the way for future discussions of the use of ICTs in the context of international security.

General comments

1. Estonia in principle supports the streamlining of the final report if it allows to bring forth consensus, does not dilute mentions of previous consensus agreements, outlines action-driven and inclusive outcomes, and finds a way to reflect the valuable and rich contributions of many countries throughout the OEWG process.
2. In particular, Estonia welcomes the structure of the zero draft, including the ordering of particular sections. With international law serving as the bedrock of responsible state behaviour in cyberspace, we consider it particularly important that it is placed before the section on rules, norms and principles for responsible state behaviour.
3. The OEWG's work has been guided by the acknowledgement that we are not starting from scratch. For this reason, Estonia finds it particularly important that the report emphasises and elevates existing consensus agreements, most notably the 11 voluntary non-binding norms of responsible State behaviour included in the 2015 report of the UN Group of Governmental Experts and endorsed by UN General Assembly resolution 70/237 by consensus, over possible norms not agreed by consensus. We welcome the inclusion of the 11 norms in the report's introduction but consider it could be emphasised even further.
4. Estonia considers the presentation of developments of ICTs having implications for all three pillars of the UN's work: peace and security, human rights and sustainable development. Estonia does not regard these as mutually inclusive but stresses that the interwoven nature of ICTs and the ongoing digital transformation of societies further requires to see these aspects as interdependent and as such integral elements of the OEWG's work.
5. The OEWG will have done the majority of its work under the circumstances of the COVID-19 pandemic. Estonia welcomes its clear reference in the report's introduction and sees it as an important reason to particularly bring out medical institutions as one part of critical infrastructure in the report.

Existing and potential threats

6. Estonia continue to welcome the inclusion of the concept of "technology-neutral" (paragraph 17). We agree that it is the malicious use of technologies that is of concern, rather than technological advances as a fact. Its continued inclusion is important to help define future scope of discussions in the First Committee.

7. We support paragraph 20 in its entirety.
8. Furthermore, we find the mention of potentially devastating humanitarian consequences of attacks on critical infrastructure and critical information infrastructure supporting essential services to the public to be vital (paragraph 21). We welcome the wording and examples listed. For building confidence, the final sentence bringing out the importance of public-private cooperation is important.

International law

9. Estonia welcomes the clear reference that international law, and in particular the Charter of the United Nations in its entirety, is applicable and essential (paragraph 27). In our view, the 2010, 2013, 2015 reports of the UN GGE could be more clearly noted as the *acqui* in the paragraph and section at large.
10. We strongly welcome the mention of international humanitarian law (paragraph 29) and suggest including some of the principles mentioned in paragraph 34 in this earlier paragraph. It would read: *“international humanitarian law, including the principles of humanity, necessity, proportionality and distinction (as mentioned in the 2015 GGE consensus report), reduces risks and potential harm to both civilians and civilian objects as well as combatants in the context of an armed conflict.”*
11. As it is possible for non-State actors to be directed by States to commit internationally wrongful acts using ICTs in various ways, we suggest making the mention more accurate: *“under the instructions of, or direction or control”* as have been reflected in ILC articles of State responsibility. In addition, it should be reflected more clearly the side of use of non-state actors and on the other hand States' obligation to take measures regarding use of their territory – therefore we suggest to divide this sentence into two parts (paragraph 30).
12. The report addresses the discussions on the divergent views related to whether the existing cyber stability framework is sufficient for addressing State use of ICTs (paragraph 32). In Estonia's view, existing international law applies in cyberspace and the existing cyber stability framework is sufficient. As such, we do not support calls for any new legally binding instrument.
13. We stress the importance of placing focus on the settlement of disputes by peaceful means and refraining from the threat or use of force. We suggest taking note of article 33 of the UN Charter regarding the language used in the zero-draft (paragraph 36). However, we would like to express caution regarding the notion of potentially developing a universally-accepted, common approach and understanding of the sources of ICT incidents at the technical level information under the auspices of the UN. Any such measure would require lengthy debate and its development would prove difficult to maintain in a way that respects States' sovereignty. As such, we believe its ability to help maintain peace and prevent conflict is limited and its inclusion under this section is not merited.
14. We find capacity building in the area of international law, national legislation and policy to be an important inclusion (paragraph 40). As many delegations throughout its discussion have noted its potential helpfulness, we express our hope for its continued inclusion in the final report. Such activities could further help along discussions on how international law applies in cyberspace, prevent conflict and enhance mutual trust and cooperation.

15. We find it important that countries would voluntarily share their national views on the issue of international law, including by utilising the annual report of the Secretary-General (paragraphs 35 and 41).
16. We also believe that the recommendation for states to submit, on a voluntary basis, their national views on how international law applies to the use of ICTs to the Cyber Policy Portal of UNIDIR will notably help to increase transparency and the sharing of best practices (paragraph 42).

Rules, norms and principles for responsible state behaviour

17. It is paramount to continue efforts to operationalise existing norms. To that effect, we support the norms guidance text proposed by Canada on the GGE 2015 norms. It allows to build common understanding on what actions States should or should not take on norms agreed by consensus, without prejudice to States' existing rights and obligations under international law. This initiative is one important way of addressing the need for further common understanding expressed by delegations throughout.
18. Estonia notes that how norms are implemented should not hinder States' economic development and highlights that adherence to human rights and paying due attention to gender perspectives contributes to creating more stable societies and economic growth. Estonia therefore welcomes the mention of the need to mainstream gender perspectives into norms implementation (paragraph 49).
19. We support the mention of the healthcare sector as part of critical infrastructure protection within voluntary norms and welcome its specific inclusion (paragraphs 50 and 55). This clearly reflects that the OEWG developed its report under the circumstances of COVID-19 and underscores that states consider medical services and medical facilities to be regarded as critical infrastructure under the norms (f) and (g) of the 2015 GGE report. However, we also note the concerns raised by some delegations and would therefore also support further clarification that this does not preclude other critical infrastructure.
20. To further streamline the report and enhance the ease of voluntary reporting for States on the various aspects discussed during the OEWG, we express support for suggestions to consolidate survey-related recommendations in the report into one recommendation and include a template in the annex for the model "National Survey of Implementation of United Nations General Assembly Resolution 70/237."

Confidence-building measures

21. Estonia agreed with the notion that inclusive, open and transparent dialogue within the OEWG was in itself a CBM (paragraph 67).
22. Estonia reaffirms the notion of interlinkages between norms and confidence-building measures as the latter may often support the effective implementation of the voluntary and non-binding norms. As such we welcome the clear mention of practical CBMs recommended in each of the consensus GGE reports (paragraph 68) and the commitment to be guided by the 2015 GGE report (paragraph 74).
23. Estonia has previously expressed support for a global repository a list of confidence-building measures adopted at regional and sub-regional levels to enable the sharing or exchange of information and best practices on confidence-building measures. We welcome the call for States to voluntarily engage in transparency measures by

sharing information and lessons learned, including through the Cyber Policy Portal of UNIDIR (paragraph 75).

24. Estonia is supportive of the idea of States nominating national Points of Contact as it would increase the effective implementation of CBMs regarding policy/diplomatic, legal and technical questions (paragraph 76). We would also welcome continued discussions of establishing a directory of such Points of Contact at the global level and find a useful recommendation.

Capacity-building

25. Estonia fully supports the idea that all UN Member States need to build capacities to identify and protect national critical infrastructure. To further enhance the section and show that we are not starting from scratch, we suggest enhancing the section with further concrete activities to reflect the three elements in capacity-building. As such, we propose adding the following mention in paragraph 86 under "Process and purpose": *"Capacity-building should be guided by the existing consensus reports of the UN Group of Governmental Experts, notably the voluntary and non-binding norms, confidence-building measures, and international law, as a way to help build action-oriented measures in line with existing agreements."*
26. We support the inclusion of human rights and gender perspectives in capacity building efforts and welcome the current text (paragraph 86, subsection "People").
27. We welcome capacity-building being described as a "shared responsibility as well as a reciprocal endeavour, a so called 'two-way street'" as a useful encapsulation of the spirit of cooperation in capacity building (paragraph 87).

Regular institutional dialogue

28. We support the inclusion of the Programme of Action initiative in the report (paragraphs 99 and 112). Our discussions in the OEWG have made it clear that there is a need for a process under the UN auspices that would be action-oriented and inclusive, allowing also to engage all relevant stakeholders in the multi-stakeholder community. We reiterate that the PoA initiative has been discussed widely within the OEWG and as such it should continue to be included.
29. We could support the inclusion of the new OEWG group in this section but reiterate that this should not preclude the PoA for fair inclusion as a recommendation. The PoA should be reflected as a dedicated mechanism to follow up the implementation of existing undertakings, while providing a periodic opportunity to assess whether additional actions are necessary. For this reason, we consider it is important that the PoA be reflected as part of this group's achievements. We believe that the initiative to establish the PoA, suggested by 48 States including Estonia, would allow to deliver results many delegations have been calling for throughout the OEWG discussions: helping to implement existing agreements, advancing capacity building and helping to prevent conflict. We also note that the wide list of participants for the PoA across regions means it cannot be considered as a national initiative but an international proposal that could be one of the most actionable elements of the OEWG.
30. If necessary, we would welcome further discussions under the current OEWG on how to reflect the PoA in the report in a way that also considers further discussions on its modalities and would set conditions for its establishment in the near future.