

**Initial “Pre-draft” of the report of the OEWG on developments in the field of information and telecommunications in the context of international security**

**And**

**Non-paper listing specific language proposals under agenda item “Rules, norms and principles” from written submissions received before 2 March 2020**

**COMMENTS FROM GERMANY**

April 6, 2020

Excellency,

Thank you very much for your letters of March 11 and 16. Germany welcomes the *Initial “Pre-draft” of the report of the OEWG on developments in the field of information and telecommunications in the context of international security* (“pre-draft”). We welcome in particular that the pre-draft is based on previous GGE reports and takes into account the work achieved in these groups. Germany is committed to engaging at the OEWG in further discussions and generally speaking supports the pre-draft.

We would like to comment, however – on the following issues and paragraphs:

- Germany appreciates the efforts by the Chair to reflect the broad and cross-cutting discussion of the OEWG in the pre-draft, and recognizes the clear commitment shown by the Chair within the text in representing the debates in an objective manner. From time to time, however, some suggestions from States are inadvertently described in such a manner that they appear to have received the support of the broad membership even if this was not the case. We suggest to carefully look again through the text in this regard.
- In particular in paragraph 61, the phrasing “States recognized the need” seems to suggest a consensus was recognized by the group as a whole on this topic. Germany suggests instead striking this sentence, or amending it as follows: “some States recognized the need.”
- Turning to section C on international law, Germany would like to take this opportunity to reiterate its support for the positions expressed in Paragraph 26 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,” and that, “efforts should therefore be directed to reaching common understanding on how the already agreed normative framework applies and can be operationalized.”
- To avoid misunderstandings, it might be useful to underline in this section the binding character of international law.

- Germany also would like to express its strong support for the importance of International Humanitarian Law (IHL) as expressed in paragraph 25.
- Paragraph 27 correctly mentions that questions on how international humanitarian law applies to cyberspace were raised. However, we would suggest to include an explicit reference to the well-established principles of “humanity, necessity, proportionality and distinction” in this paragraph – as this was already part of the 2015 GGE report (para 28 (d) therein) and would emphasize existing consensus.
- Germany supports the view expressed in Paragraph 30 that, “a first step to further develop common understandings could be increased exchanges on their interpretation of how international law applies to the use of ICTs by States.”
- Germany does not see the need to develop additional instruments or a new legal framework, as suggested by some member states (Paragraph 28).
- Regarding paragraph 31, Germany would like to emphasize that the focus of the OEWG should be on enhancing existing norms and improving their understanding and implementation. In this regard we consider the proposals to protect the public core of the internet, not to disrupt the infrastructure essential to political processes, not to harm medical facilities and to highlight transnational infrastructure as useful additions to the already existing norms on the protection of critical infrastructure as contained in the 2015 GGE report.
- Germany is of the view that, the application of the international rules on State responsibility and hence the act of formally attributing a malicious cyber operation to a State under international law is first and foremost a national prerogative. As this view was also expressed during the debates, Germany would be grateful if this point could be reflected in Paragraph 32.
- Germany is open to extending the OEWG /establishing a new OEWG for another year. In particular this would give us more time to discuss the issues in relation to a regular institutional dialogue that are mentioned in paragraph 62 and allow us to take into account the proceedings of the current GGE while deliberating on this issue.
- Germany would also suggest changing the suggested draft language in Paragraph 65, which appears to present a weaker standpoint on multistakeholder participation than that previously agreed to by the UN membership. This should be replaced with language which strongly supports multistakeholder participation. The language from the 2015 report of the GGE (A/70/174), which received UN consensus adoption in 2015 via Resolution 70/237 could serve as the basis for this.

I hope that these suggestions will be of use in the preparation of the final draft report by the Chair.

Turning to *specific proposals under agenda item “Rules, norms and principles*, Germany wishes to express its support for some of the proposals made by member states:

We generally support the approach put forward by Canada to give guidance on the 2015 norms based on text which was discussed in the 2016-17 GGE and was widely seen as useful and non-controversial. Even though the Canadian proposal did not make it into the non-paper, we hope it will be considered in the future work of the OEWG and in the drafting process.

With regard to the specific language proposals listed in the non-paper we would like to emphasize that we believe that the focus of the work of the OEWG should be on promoting awareness and implementation of existing norms. We therefore see primarily room for upgrading and enhancing existing norms and not for introducing new norms. If this is taken into account, the thoughts expressed in the following contributions by OEWG member states are considered to be particularly useful by Germany:

- States should pledge not to use ICTs and ICT networks to carry out activities which run counter to the task of maintaining international peace and security.
- States should be encouraged to take measures to prevent non-State actors, including the private sector, from conducting ICT activities for their own purposes or those of other non-State actors to the detriment of third parties including those located on another State’s territory.
- This aim could be achieved by working with the private sector to define permissible actions using a risk-based approach and to develop concrete tools - certification processes, best-practices guides, response mechanisms to incidents and, as appropriate, national regulations.
- “State and non-state actors should neither conduct nor knowingly allow activity that intentionally and substantially damages the general availability or integrity of the public core of the Internet, and therefore the stability of cyberspace” [would be] guidance for implementation of UN GGE 2015 recommendation 13(f) and therefore bringing this also under the scope of UN GGE 2015 recommendation 13(g).
- “State and non-state actors must not pursue, support or allow cyberoperations intended to disrupt the technical infrastructure essential to elections, referenda or plebiscites,” [would be] guidance for implementation of UN GGE 2015 recommendation 13(f) and therefore bringing this also under the scope of UN GGE 2015 recommendation 13(g).

Please accept, Excellency, the assurances of my highest consideration.