
April 2020

Purpose

This paper outlines Japan’s position on the initial pre-draft of the Report of the United Nations Open-Ended Working Group on “Developments in the Field of Information and Telecommunications in the Context of International Security” (OEWG) based on Japan’s understanding of the Group’s discussion.

Japan hopes that this paper will help refine the Group’s work to the final substantive session in July. Considering that word-by-word negotiation is not expected at this stage, Japan reserves the right to make more detailed comments on the draft of the report later in the process of the OEWG.

1. General Comments

Japan would like to make following comments on the initial pre-draft in general;

- Japan appreciates that the report reflects in large part the interventions by the Member States in the OEWG. At the same time, Japan believes that regarding issues where the positions of each country differ, the report should be written in a neutral and well-balanced manner.

- The subject of each sentence, for instance “States”, “Member States”, “Some states”, “many states” should be carefully selected to properly reflect the discussions in the OEWG. Japan thinks that the use of “The OEWG” as a subject, is desirable where the Member States reached a common recognition.

- It is encouraged to use the language in the past consensus reports of GGE where the Member States hold different views. Particularly, regarding international law, the 2015 GGE report has already confirmed that international law, in particular the Charter of the United Nations in its entirety, applies and is essential to maintaining peace and stability and promoting an open, secure, stable, accessible and peaceful ICT environment. Japan strongly proposes to insert “in its entirety” after “the Charter of the United Nations” in the report.
2. **Comments on the Conclusions and Recommendations**

Japan understands that the recommendations in the chapter of the *Conclusions and Recommendations* is the output of the work in the OEWG in accordance with the consensus of the group. From this viewpoint, Japan makes following comments;

- Japan thinks that it is premature to judge the necessity of convening a new OEWG or GGE, especially at the stage when current GGE still continues its discussion. Therefore, Japan thinks that para 68(e) needs to be reconsidered.

- Japan considers that OEWG and GGE already provide useful fora for Member States to express their national views and practice on how international law applies to the use of ICTs by States. Therefore, Japan thinks it is too early to task out the issue to ILC, when we had only one year of discussions in the OEWG and GGE still continues its discussions. Japan requests to delete the relevant paragraph below.

  * The International Law Commission be requested by the General Assembly to undertake a study of national views and practice on how international law applies in the use of ICTs by States in the context of international security.

- While Japan recognizes the usefulness of a global level repository of capacity-building efforts, it is concerned that establishing any kind of “facilitation mechanism” may reduce the flexibility of each country’s effort and have an adverse effect. Japan proposes the following amendment.

  * The Secretary-General be requested to establish a global mechanism make available the Cyber Policy Portal of the United Nations Institute for Disarmament Research as a repository for enhancing coherence in capacity-building efforts in the use of ICTs, possibly in the form of a facilitation mechanism, in coordination with existing efforts, including at the regional and sub-regional levels. States in a position to contribute expertise or resources to the development of such a mechanism are encouraged to do so.

- For the sake of further clarity and consistency with the past consensus documents, and accurate reflection of the discussions in OEWG, Japan proposes following amendments.

  * Member States be invited to continue to inform the Secretary-General of their views and assessments on Developments in the field of ICTs in the context of international security and to include additional information on their implementation of international rules, norms and principles of responsible behaviour of States in the use of ICTs.

  * The Secretary-General be requested to establish a repository of national practices regarding international rules, norms and principles of responsible behaviour of States, which could be further developed into guidance on implementation. The use of surveys or templates on a voluntary basis are encouraged in this regard.

  * Member States continue to consider, at the multilateral level, international rules, norms and principles of responsible behaviour of States.
The meaning of the term “international rules”, is not clear.

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Member States be encouraged to further cooperate to build capacity to identify and protect national and transnational critical infrastructure as well as supranational critical information infrastructure.

* The meaning of the terms “transnational critical infrastructure” and “supranational critical information infrastructure” are not clear and needed to be clarified. Besides, Japan is concerned that introducing these unclear concepts and emphasizing their importance may lead to the undervaluation of the importance of national critical infrastructure. This also concerns paragraph 38 and 49, where the term “supranational critical information infrastructure” appears.

e) With regard to regular institutional dialogue, affirming that the increasing dependency on ICTs and the scope of threats stemming from their misuse necessitates urgent action calls for further discussions to enhance common understandings and intensify cooperation through multilateral and multi-stakeholder discussions, the OEWG recommends that:

*Amended based on Japan’s understanding of the discussions.

➢ Japan proposes to combine the following two paragraphs as they seem to duplicate.

- Member States be invited to submit, on a voluntary basis, national views and practice on how international law applies to State use ICTs to the Cyber Policy Portal of the United Nations Institute for Disarmament Research.
- The Secretary-General be requested to establish a repository of national views and practice on how international law applies to the use of ICTs by States in the context of international security.

for example:

Member States be invited to submit, on a voluntary basis, national views and practice on the voluntary, non-binding norms of responsible State behaviour of the 2015 GGE report and on how international law applies to the use of ICTs by States in the context of international security, to the Cyber Policy Portal of the United Nations Institute for Disarmament Research.

3. Comments in detail (para.1~67)
To reflect the discussions in the OEWG appropriately, and to avoid misunderstanding, and input national position, Japan would like to propose the amendments and seek classification in the initial pre-draft as follows;

5. The three consensus reports adopted by the GGEs (2010, 2013 and 2015) are cumulative in nature and constitute important milestones in international cooperation towards an open, secure, stable, accessible and peaceful ICT environment. Over time, these Groups have generated a growing body of common understanding of the threats posed by the use of ICTs in matters related to international peace and security, and of States’ commitments to address these threats through a framework of international law, voluntary norms and confidence-building measures. Notably, the 2013 and 2015 reports recognized that international law, in particular the Charter of the United Nations in its entirety, is applicable
and essential to maintaining peace and stability in the ICT environment. The 2015 report also recommended 11 norms of responsible State behaviour. In resolution 70/237, Member States agreed by consensus to be guided in their use of ICTs by the 2015 report.

*See 1. General comments.

12. The OEWG recognizes that the individual elements comprising its mandate are interrelated and mutually reinforcing, and are to be considered through a human-centric lens. International law and norms regulate and guide State behaviour; confidence-building measures help to create trust and stability in relations between States; and capacity-building helps States adhere to their international commitments and create a resilient, secure and peaceful ICT environment. Measures that build confidence and capacity reinforce respect for adherence to international law, encourage the operationalization of norms, provide opportunities for enhanced cooperation between States, and empower each State to reap the benefits of ICTs for their societies and economies. In light of these synergies, the following sections of the report are to be considered as complementary and interdependent.

*Japan thinks that “adherence” is more appropriate to describe the responsibility of States in terms of international law.

15. States expressed the view that the development or use of offensive ICT capabilities, as well as the stockpiling of vulnerabilities, are contributing to the militarization of the digital space. A number of States are developing ICT capabilities for military purposes, and the use of ICTs in future conflicts between States is becoming more likely. Pursuit of increasing automation and autonomy in ICT operations was also put forward as a specific concern. States highlighted as a central threat the possibility that ICTs could be used in a manner inconsistent with a State’s obligations under international law. Additional concerns were conveyed regarding interference in the internal affairs of States through the use of ICTs, including by means of information operations and disinformation campaigns. Concerns were also raised about the exploitation of harmful hidden functions and the integrity of global ICT supply chains.

*Japan understands that the OEWG did NOT reach a consensus on the view concerning alleged “the militarization of the digital space”.

19. While States observed that critical infrastructure is defined differently in accordance with national prerogatives and priorities, they emphasized the severity of threats to particular categories of infrastructure, including for instance the health and financial sectors and electoral infrastructure. Transborder and transnational critical infrastructure was highlighted as at risk, as was supranational critical information infrastructure, notably those global systems upon which public or financial services rely. In this regard, States underscored that attacks on critical infrastructure pose not only a threat to security, but also to economic development and people’s livelihoods.

*Japan believes that the notions of “Transborder critical infrastructure”, “transnational critical infrastructure” and
“supranational critical information infrastructure” are not commonly understood by Member States.

20. In light of the increasingly concerning digital threat landscape, and recognizing that no State is sheltered from these threats, the OEWG underscored the urgent need for States to further develop enhance, through multilateral and multi-stakeholder forums, cooperative measures cooperation to address such threats. It was affirmed that acting together and inclusively would produce more effective and far-reaching results. The positive contributions of the private sector, civil society and academia were also emphasized in this regard.

*Many countries including Japan reiterated the importance of “multi-stakeholder approach” during the meetings. Japan thinks that “cooperation” describes better the broader nature of each country’s effort, rather than limiting to “cooperative measures”.

22. In their discussions at the OEWG, States reaffirmed that international law, and in particular the Charter of the United Nations in its entirety, is applicable and essential to maintaining peace and stability and promoting an open, secure, stable, accessible and peaceful ICT environment.

*See 1. General comments.

23. Specific principles of the UN Charter highlighted include sovereign equality; the settlement of international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; respect for human rights and fundamental freedoms; and non-intervention in the internal affairs of other States. The inherent right of individual or collective self-defense is recognized in the Charter.

*The 2015 GGE report has already confirmed that international law, in particular the Charter of the United Nations in its entirety, including the inherent right of self-defense, applies and is essential to maintaining peace and stability in the ICT environment.

24. States had an interactive exchange of views on the relevance and applicability of specific bodies of treaties and customary international law, such as international humanitarian law, international human rights law, international criminal law to the international security dimension of ICTs, including international humanitarian law, international human rights law, international criminal law, as well as international customary law. It was also noted that the responsibilities of States with regard to internationally wrongful acts are applicable to their use of ICTs every internationally wrongful act of a State using ICTs entails the international responsibility of that State.

*International customary law is relevant and applicable, but not “specific bodies of law” (the former). To be more accurate and consistent with the discussions in OEWG (the latter).
27. At the same time, during the discussion, it was also noted that there may be a need to adapt existing international law or develop a new instrument to address the unique characteristics of ICTs. In particular, it was highlighted that certain questions on how international law applies in the use of ICTs have yet to be fully clarified. Such questions include, inter alia, what kind of ICT-related activity might be interpreted by other States as a threat or use of force (Art. 2(4) of the Charter) or might give a State cause to invoke its inherent right to self-defence (Art. 51 of the Charter). They also include questions relevant to how the principles of international humanitarian law, including the protection of civilians and civilian objects, apply to ICT operations in the context of armed conflict. In this regard, it was noted that the issue of the applicability of international humanitarian law to the use of ICTs by States needed to be handled with prudence.

28. In this context, proposals were made for the development of a legally binding instrument on the use of ICTs by States as the quickly evolving nature of the threat environment and the severity of the risk necessitates a stronger, internationally agreed framework. It was noted that such a binding framework may lead to more effective global implementation of commitments and a stronger basis for holding actors accountable for their actions, while many States are of the view that there is no such need.

29. It was suggested that while existing bodies of international law do not include specific reference to the use of ICTs in the context of international security, international law can develop progressively in this regard. Developing complementary binding measures concurrently with the implementation of norms was also proposed. A politically-binding commitment with regular meetings and voluntary State reporting, was also suggested as a possible middle ground approach, as it is premature to discuss concrete ways forward to develop binding instrument.

* Japan thinks these paragraphs seem to favor the position arguing the necessity of a legally binding “new instrument”, while many countries including Japan do not see this necessity. Japan is especially concerned that “adapting” international law may roll back the achievement of past GGEs confirming the applicability of existing international law to the use of ICTs by States. Japan requests these paragraphs as a whole to be reconsidered to strike better balance between the different views and to reflect the position which emphasizes the need to discuss more about how international law applies. Japan thinks at least the amendments written in blue are necessary.

D. Rules, Norms and Principles for Responsible State Behavior

Voluntary, non-binding norms reflect the expectations of the international community regarding the behavior of States in their use of ICTs. They play an important role in increasing predictability and reducing risks of misperceptions, thus contributing to the prevention of conflict. Norms do not replace States’ obligations under international law, but rather provide additional specific guidance on what constitutes responsible State behaviour in the use of ICTs. They reflect the expectations of the international community, set standards for responsible State behavior and allow the international community to assess the activities and intentions of States.
In 2015, the General Assembly agreed by consensus that all States should be guided in their use of ICTs by the 2015 report of the Group of Governmental Experts, which sets out 11 voluntary, non-binding norms of responsible State behaviour.

*Amended for the consistency with the 2015 GGE report.

37. States stressed the need to promote awareness of the agreed 11 existing norms and support their operationalization. While these norms articulate what actions States should or should not take, States underscored the need for guidance on how to operationalize them. In this regard, States called for the sharing and dissemination of good practices and lessons on norm implementation. Different cooperative approaches were also proposed, such as developing a roadmap to assist States in their implementation efforts.

*To make it clear that, “existing” and “these norms” mean the 11 norms agreed in the 2015 GGE report.

38. States, during discussions and through written submissions, also proposed suggestions for the “upgrading” as well as further elaboration of norms. Proposals included, inter alia, that States should affirm their commitment to international peace and security in the use of ICTs; that it should be reaffirmed that States hold the primary responsibility for maintaining a secure, safe and trustable ICT environment; that the general availability or integrity of the public core of the Internet should be protected; and that States should not conduct ICT operations intended to disrupt the infrastructure essential to political processes or harm medical facilities. States also proposed the need to further ensure the integrity of the ICT supply chain, expressing concern over the creation of harmful hidden functions in ICT products, and the responsibility to notify users when significant vulnerabilities are identified. States also highlighted that supranational critical information infrastructure could be considered a special category of critical infrastructure, and that its protection was the shared responsibility of all States.

39. [placeholder: additional proposals by Member States for new norms could be introduced here]

*Japan thinks that possible new norms should be carefully scrutinized from the viewpoint of avoiding any change to the existing 11 norms nor duplication with them. Japan proposes to insert this point into the report.

48. In their discussions at the OEWG, States reiterated the recommendations on international cooperation and capacity-building in the consensus GGE reports. They emphasized the critical important function that capacity-building can play with regard to empowering all States and other relevant actors to fully participate in the global normative framework, while also contributing to shared commitments such as the 2030 Sustainable Development Agenda. In addition, capacity-building plays an important enabling function for promoting adherence to international law and the implementation of the voluntary, non-binding norms of responsible State behaviour and the CBMs recommended by the previous GGEs, while also offering important opportunities for building understanding between and within States.
Although the importance of capacity-building is doubtless, Japan considers that Member States have responsibility to adhere to international law and agreed norms even without capacity-building.

51. Many challenges were identified that hinder or reduce the effectiveness of capacity-building. The lack of coordination at the international level was highlighted as a significant concern. It was noted that better coordination at the international level would be one of the measures to tackle these challenges. Practical challenges in the design, delivery, sustainability and accessibility of capacity-building activities, and the lack of specific metrics to measure their impact, were also raised. Once capacity has been built, some countries face the challenge of talent retention in a competitive market for ICT professionals. States highlighted that lack of access to ICT security-related technologies was also an issue.

Japan proposes to change the sentence in a more positive manner.

52. States underscored that ICT-related capacity-building efforts would be more effective if they were guided by widely accepted principles. To this end, States stressed the importance of national ownership in the identification of capacity-building and technical assistance needs and priorities. They also noted that capacity-building should be demand-driven, tailored to specific needs and contexts, evidence-based, results-oriented, and have sustainable impacts. Capacity-building initiatives should be transparent and accountable. Additionally, it was emphasized that capacity-building should be non-discriminatory, politically neutral, gender sensitive, and focus on peaceful outcomes. In this regard, States underscored that technical capacity-building and capacity-building on the normative framework should go hand-in-hand.

It is not clear what “widely accepted principles” mean.

59. States suggested many potential purposes for regular dialogue, including awareness raising and information exchange; developing guidance to support and monitor the implementation of existing commitments and recommendations; building trust and confidence; coordinating, strengthening and monitoring effectiveness of capacity-building; identifying and exchanging good practices; encouraging further study and discussion on areas where no common understanding has yet emerged; and negotiation of further commitments of a voluntary or binding nature. It was also emphasized that any platform for regular institutional dialogue should be a process building on previous agreements, inclusive, consensus driven, sustainable, results-oriented, with specific objectives that take forward agreements in practical and tangible ways.

Japan thinks that we should focus on helping and encouraging the implementation of existing commitments and recommendations, rather than monitoring them.

61. Noting that many parts of the UN address digital technology issues, including their development, rights and crime dimensions, States recognized the need for a dedicated mechanism discussion under UN auspices focusing on international security issues. It was
recalled that there are established forums within the UN system focused on issues relating to ICTs and terrorism, crime, human rights and Internet governance. Greater exchange and exploration of synergies between these areas, such as through joint meetings of committees of the General Assembly, while respecting the expert nature or specialized mandate of each, was encouraged.

*Amended to reflect the discussion in the meetings more accurately.

62. A variety of proposals were made to take forward regular institutional dialogue. It was noted that the GGE process since 2004 has been a form of regular dialogue. It was also suggested that the format of the OEWG, with its inclusive membership and transparent discussions, should become the standard for discussion and therefore the renewal of its mandate was called for. It was highlighted that there was value in having the sixth Group of Governmental Experts meeting in parallel to the OEWG, stressing their complementarity and the opportunity to capitalize on the unique features of each process. Looking beyond the mandates of the OEWG and sixth GGE, a further suggestion was that regular institutional dialogue could be the follow-up mechanism to a politically binding instrument.12 Another possibility raised was that an inter-governmental specialized agency could be established.

* Japan considers that it is not appropriate to mention the issues beyond OEWG.

ANNEX:


(END)