Programme of action (PoA) to advance responsible State behaviour in the use of ICTs in the context of international security

France's submission to the Secretary General's report mandated by UN General Assembly Resolution A/RES/77/37

I – Introduction

- For over 20 years, States have recognized that ICTs, while they are a catalyst for human progress and development, can potentially be used for purposes that are inconsistent with the objectives of maintaining international stability and security.

- Since 2003, the General Assembly First Committee has created a succession of working groups which have undertaken efforts to preserve international peace, security and stability in the ICT environment. To that end, they have consolidated a framework for responsible State behaviour in the use of ICTs, endorsed by the General Assembly in consensus resolutions[1].

- These working groups have also discussed the establishment of a "regular institutional dialogue" (RID) to address issues related to the use of ICTs in the context of international security.

- It has been underlined that such a RID should place a strong focus on supporting the implementation of the framework. In particular, the 2019-2021 OEWG concluded that any future RID should be "an action-oriented process with specific objectives, building on previous outcomes, and be inclusive, transparent, consensus driven, and results-based"[2]. States have also underlined the "utility of exploring mechanisms dedicated to following-up on the implementation of the agreed norms"[3].

- Meanwhile, States have also observed that the framework is "cumulative and evolving" in nature, and that additional norms could be developed over time. Separately, they have also noted the possibility of future elaboration of additional binding obligations, if appropriate[4]. While supporting implementation of the existing agreed framework, future RID should thus allow for the potential further development of said framework, especially as new threats and challenges may arise.

- In this context, the establishment of a Programme of action would provide First Committee with a permanent institutional mechanism which would follow-up on the implementation of the agreed framework, while also allowing for its further development, if appropriate.

II – Scope and objectives

- As a First Committee mechanism, the scope of the PoA would be matters related to the use of ICTs in the context of international security. Its overarching objective would be to contribute to the maintenance of international peace and security, by preserving an open, stable, secure accessible and peaceful ICT environment.

- To that end, the PoA should seek in particular to achieve the following objectives :
  - *Cooperation* : to reduce tensions, prevent conflicts and promote the use of ICTs for peaceful purposes through a cooperative approach in dealing with cyber threats, and inclusive dialogue among States as well as with relevant stakeholders ;

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[1] See UNGA Resolutions A/RES/70/237, A/RES/76/19.
[2] Final report of the 2019-2021 OEWG, A/75/816, paragraph 74.
[3] Final report of the 2019-2021 OEWG, A/75/816, paragraph 73.
[4] UNGA Resolution A/RES/76/19, PP10.

o *Stability* : to advance stability in cyberspace, by supporting the implementation of, and further developing if appropriate, the framework for responsible State behaviour based on international law, including international humanitarian law and human rights, norms of responsible State behaviour, confidence-building measures and capacity-building;
o *Resilience*: to contribute to the reduction of digital divides and the strengthening of global resilience in relation to the implementation of the framework for responsible State behaviour.

III – <u>Structure and content</u>

<u>Institutional structure:</u>

The PoA could be based on a <u>political document</u> which would notably
> **(i) <u>reaffirm States' political commitment to the framework for responsible State behaviour</u>**, as affirmed in relevant reports and resolutions[5]. This founding commitment would take into account the consensus outcomes adopted within the 2021-2025 OEWG (for example, the potential establishment of a global intergovernmental directory of points of contacts, the possible global portal on cooperation or the idea of a repository of threats). These consensus outcomes should be built upon in a possible future PoA[6].
> **(ii) <u>establish a permanent institutional mechanism</u>** to (i) advance implementation of this framework, including by supporting States' capacities to do so, (ii) further develop the framework as appropriate, (iii) foster multistakeholder cooperation in relevant areas.

The PoA, as a permanent mechanism could be based on the following institutional structure:
- <u>Regular meetings</u>, which could be held on a yearly basis (France is open to further discussions on the optimal periodicity of PoA meetings, taking into account States' capacities as well as the need for the PoA to keep up with the pace of developments in the field of ICTs). These meetings could (i) discuss existing and emerging threats, (ii) consider the implementation of norms, rules and principles, (iii) further discussions on how international law applies to the use of ICTs, and identify potential gaps, (iv) discuss the implementation of confidence-building measures, (v) identify priorities for capacity-building, also on the basis of voluntary reporting, (vi) identify further actions needed and determine the programme of work for intersessional meetings. Yearly conferences could decide by consensus to create technical work streams, open to all States and relevant stakeholders, focused on specific items (see below). Participation by technical and legal experts would be encouraged.
- <u>Intersessional meetings</u> would advance the programme of work agreed upon by yearly meetings. Their work could be structured in technical work streams focused on specific items, in accordance with the priorities and areas of work identified by yearly meetings.
- <u>Review conferences</u> could be held, for example every four years, to consider whether the framework should be updated, and further develop it if appropriate (see below). A dedicated workstream may be created to deepen discussions on how international law applies to the use of ICTs, and assess whether gaps exist in the framework that may call for its further development.

<u>Content :</u>

(i) <u>Advancing the implementation of the framework</u>

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[5] This would include UNGA resolution A/RES/76/19, the 2010, 2013, 2015 and 2021 consensus reports of the groups of governmental experts, the 2021 report of the Open-ended Working Group, the first annual progress report of the open-ended working group 2021–2025, bearing in mind that the future consensus outcomes of the current 2021-2025 OEWG will add to this framework which is cumulative and evolving.
[6] See UNGA Resolution 77/37, A/RES/77/37, OP2.

- The PoA would encourage voluntary reporting of national implementation efforts, either by creating its own reporting system or by promoting existing mechanisms (eg, UNIDIR's National Survey of Implementation, or national reports to the UNSG). This reporting would serve as a basis to identify priorities regarding implementation of the framework, and map needs in terms of capacity-building.

- PoA yearly meetings would be able to adopt, and regularly update, actionable recommendations for national implementation efforts. In keeping with the institutional structure described above, PoA yearly meetings could create technical workstreams aimed at advancing exchanges on specific aspects related to the implementation of the framework.
- For example, a yearly meeting may identify a thematic priority for the implementation of the framework, such as the implementation of a given norm or CBM, the security of ICT products and services, protection of critical infrastructure, etc. To further exchanges on this topic, the yearly meeting may decide to create a dedicated work stream. The work stream would then take place in the intersessional meetings of the PoA and would submit its conclusions to the following yearly meeting.

- The PoA would support capacity-building efforts in relation to implementation of the framework, and seek to enhance multistakeholder cooperation in this area as well as coordination with other relevant initiatives.
   o States could discuss the establishment as part of a future PoA of a voluntary trust fund to fund certain activities aimed at promoting the framework for responsible State behaviour. Such a fund could build on the example of the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) [7]. Projects or initiatives funded by such an instrument should be in line with "terms of reference" which the first PoA meeting could agree upon (promoting adherence to the framework, respect for the guiding principles for capacity-building agreed in the 2019-2021 OEWG Final report, etc.).
   o The PoA would also seek to leverage existing efforts and initiatives. PoA meetings, and intersessional meetings of a technical working group on capacity-building, would allow States to discuss priorities in this area (taking into account the needs identified *via* voluntary reporting), and stakeholders to present relevant initiatives. The PoA could also develop a "labelling" system to endorse and promote activities in line with its objectives.
   o During PoA meetings, briefings could be delivered by representatives of other organizations (ITU, World Bank Cybersecurity Trust Fund), to ensure coordination and complementarity between capacity-building activities taken by each structure (each acting within its own mandate and area of competence).

(ii) Developing the framework: if appropriate to address emerging challenges, regular meetings and/or review conferences would be able to update the framework (for example by adopting new norms), on the basis of consensus.

(iii) Multistakeholder involvement. Mindful that "States bear primary responsibility for the maintenance of international peace and security" [8] and shall therefore retain the central role (including exclusive decision-making power) in any First Committee process, France supports enhanced multistakeholder engagement and cooperation in a future PoA.

- Decision-making and negotiation of outcome documents would remain the exclusive prerogatives of States.
- Meanwhile, the value of further strengthening collaboration, when appropriate, with civil society, the private sector, academia and the technical community, was repeatedly emphasized

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[7] UN Trust Facility Supporting Cooperation on Arms Regulation : https://www.un.org/disarmament/unscar/ .
[8] Final report of the 2019-2021 OEWG, A/75/816, paragraph 10.

by relevant First Committee working groups[9]. Cooperation with these stakeholders can be essential for States to implement their commitments under the framework. In addition, these stakeholders themselves "have a responsibility to use ICTs in a manner that does not endanger peace and security"[10]. Private stakeholders can also bring valuable expertise to discussions and contribute to capacity-building efforts.

- <u>Modalities for the proceedings of PoA meetings should therefore enable stakeholders to attend formal sessions, deliver statements and provide inputs,</u> as is the case in other First Committee processes where their expertise is useful, such as the GGE on lethal autonomous weapons systems convened within the Convention on Certain Conventional Weapons (CCW)[11]. Such modalities would also be conducive to a more transparent process by allowing for multistakeholder dialogue in a formal setting.

- To ensure inclusivity, <u>participation by stakeholders from all regional groups should be encouraged and supported,</u> including *via* specific sponsorship programmes.

IV – <u>Preparatory work and modalities for the establishment of a PoA</u>

Preparatory work : France supports further focused, dedicated discussions in the 2021-2025 OEWG to further elaborate the PoA and seek consensus on its establishment.

- The final reports of the 2019-2021 OEWG and 2019-2021 GGE have recommended that the PoA should be further elaborated including at the 2021-2025 OEWG process. The 2022 Annual progress report of the current 2021-2025 OEWG also calls for focused discussions on the PoA.

- UNGA Resolution 77/37 also foresees that the UNSG report on the PoA should be submitted to the General Assembly and serve as a basis for further discussion within the OEWG. Many States have insisted that the OEWG should be used as the primary forum to further develop the PoA with a view to its future establishment.

- Therefore, <u>intersessional meetings and dedicated sessions of the OEWG should be organized in 2024 and 2025 to continue elaborating the different aspects of the PoA, draft its founding document</u>, etc.

Establishment : France supports further discussions on the precise modalities for the potential establishment of a PoA, including the option of a dedicated conference.

- UNGA Resolution 77/37 noted an "international conference" as an option to establish the PoA (as was done for example for the PoA on small arms and light weapons). If States so decide, such an international conference could be convened, in 2025, to adopt the founding document of the PoA, on the basis of the preparatory work done in the 2021-2025 OEWG.

- This international conference should make decisions on the basis of consensus, at least on matters of substance. It should provide for participation by relevant stakeholders (accredited with modalities close to those adopted *via* resolution 75/282 for the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes).

- The General Assembly could then adopt a Resolution which would welcome the outcome of the conference, and decide to hold the first meeting of the newly created PoA.

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[9] Final report of the 2019-2021 OEWG, A/75/816, paragraph 22.
[10] Final report of the 2019-2021 OEWG, A/75/816, paragraph 10.
[11] Article 49 of the rules of procedure used in the CCW (and adopted for this Convention's 5th Review Conference in 2016).