

United States Submission of Views on a Programme of Action (PoA) to advance responsible State behavior in the use of ICTs in the context of international security

Introduction

UN Member States have acknowledged that information and communications technologies (ICTs) have the potential to be used for purposes that are inconsistent with the objectives of maintaining international peace and stability. Over the course of many years, States have come together under the auspices of the United Nations to discuss and address this issue. Through consensus affirmation of reports from the UN Group of Governmental Experts (GGE) and UN Open Ended Working Group (OEWG), States have coalesced around a framework for responsible State behavior in the use of ICTs. This framework for enhancing international stability is comprised of the embrace of relevant international law, including the U.N. Charter, a set of non-binding norms, and confidence building measures.

While the framework has received global support, its success depends on states' adherence to and implementation of its elements. As articulated in the consensus report of the 2015 GGE, States have previously affirmed the need to establish regular institutional dialogue with broad participation under the auspices of the United Nations.¹ Building on that effort, the OEWG has since reaffirmed the need for states to pursue the establishment of a mechanism for future institutional dialogue.²

The consensus 2021 OEWG Report recommended that a future UN mechanism on cyber issues should be inclusive, transparent, consensus-driven, and results-based. The Programme of Action (POA) offers such a mechanism and provides an opportunity for states to create a permanent, but flexible, mechanism in the UN to advance the work of the framework to enhance peace and security in cyberspace and prevent conflict and harm to civilians caused by the use of ICTs. The POA should also be a permanent and action-oriented mechanism through which UN Member States can implement and advance the consensus Framework.

Scope of the Programme of Action

Resolution 77/37 "recall[ed] the assessments and recommendations of the 2010, 2013, 2015 and 2021 groups of governmental experts, as well as those of the 2021 Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security," along with the current OEWG's first annual progress report, and in particular "the cumulative and evolving framework for responsible State behavior in the use of information and communications technologies elaborated by these processes," and calling on

¹ See 2015 Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, A/70/174 (July 22, 2015), para. 18.

² Report of the Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security, A/75/816 (March 18, 2021), paras. 70-74.

Member States to be guided by these reports and the framework.³ This framework, supported by GGE and OEWG reports, is the foundation of the POA.

Member states should set the POA's direction and update it over time, maintaining a priority focus on practical implementation and capacity building work dedicated to the implementation of the framework. The permanent nature of the POA would make it a durable resource for states in these efforts.

As a permanent mechanism, the POA should also have the flexibility to address future threats and the agility to assess States' evolving needs and best practices to address these threats. States should also be able to consider within the POA whether and how the consensus framework should evolve over time.

Non-state stakeholders should be an integral part of the POA process. The POA must have modalities for stakeholder participation that are as inclusive as possible to fully leverage these stakeholders' expertise.

Establishment of a POA

States' primary objective in establishing a future POA and its content should be to design an architecture that facilitates national implementation of the consensus framework, promotes cooperation among States on the security in and of the use of ICTs, and enables advancements to the framework over time as Member State consensus evolves.

To facilitate the creation of the POA in an expedient manner, the POA should be launched via an "international conference"⁴ in 2025 following the conclusion of the 2021-2025 OEWG. The outcome documents of that conference, which could include a political declaration, should form the substantive foundation of the POA and address modalities and rules of procedure for the POA mechanism. Regular POA meetings should start in 2026.

Given the POA's proposed mandate to address the peace and security dimensions of the use of ICTs, it should be established under the UN First Committee. The UN Office of Disarmament Affairs would be a logical secretariat for this future mechanism. The POA should function within existing budgetary resources to the greatest extent possible.

Structure

The POA should convene an annual meeting of States at which representatives would decide on thematic or issue-focused areas to be discussed in technical or informal working groups that would meet at a frequency established at the annual meeting or via the conference's outcome documents. UNODA or UNIDIR could provide briefings summarizing national survey submissions and these meetings would also be opportunities for states to exchange views on:

³ See Resolution adopted by the General Assembly on 7 December 2022, A/RES/77/37 preambular paras. 10, 11.

⁴ See A/RES/77/37, operative para. 3.

- National experiences and best practices in implementing the framework;
- Relevant capacity building needs and resources; and
- Emerging issues and threats, including how the POA should address them.

In addition to an annual meeting and regular meetings of established technical or working groups, the POA could convene a Review Conference every three or four years to reaffirm the POA's outcomes and consider whether changes to the content or structure of the POA are necessary. This regular review of POA foundational documents would give States the flexibility to adapt the POA as circumstances evolve.

The POA would be launched in 2026 following the conclusion of the 2025 conference. Each year thereafter, via a resolution or decision, UNGA First Committee would affirm the consensus outcomes of the POA's annual meetings, including recommendations for timing and location of future meetings. The First Committee would also affirm outcomes of review conferences when they occur.

Capacity Building

Given that countries are at all stages of developing their cyber expertise and skills, the UN has acknowledged that "capacity building is essential for cooperation of States and confidence-building in the field of ICTs."⁵ The United Nations has a key role in coordinating with and highlighting the range of multistakeholder actors who are actively engaged in capacity building on relevant cyber issues as well as implementing specific capacity building programs as directed by Member States.

The POA's primary capacity building function should be directly tied to states' national-level efforts to implement the framework. The POA should also facilitate dedicated discussions about what types of capacity building States need to implement the framework to ensure its efforts closely align with States' range of needs. In other words, it should aim to raise international awareness on the importance of cyber capacity building to support the framework, while also providing guidance and best practices that states could establish domestically/nationally to implement the framework.

The United States recognizes that many States still lack awareness on what the framework is and its importance. Many also lack basic national-level cybersecurity capabilities needed to begin implementing the framework, including domestic needs associated with supporting norms and confidence building measures. There are a range of existing UN and non-UN entities with expertise in areas such as national cybersecurity policies and strategies, cyber incident management and critical infrastructure protection, domestic cybercrime legislation, cybersecurity culture, and cybersecurity standards. The POA should not duplicate or supersede such existing effort. All of these efforts enhance states' national security posture and

⁵ See A/RES/77/37, preambular para. 20.

ultimately enable implementation of the framework but are outside of the mandate of the POA.

Multistakeholder Participation

States should retain exclusive decision-making authority within the POA. Nonetheless, non-governmental stakeholders, to include civil society, academia, and the private sector, play a positive role in multilateral fora by bringing expertise to formal discussions and contributing to capacity building efforts. These groups should have an opportunity to actively participate in the POA as observers, without the right to vote.

For the POA to be as inclusive as possible of interested stakeholders, the modalities for objecting to stakeholder participation should be transparent and build upon existing gold-standard modalities. For example, States can look to the Open-ended Working Group on Ageing as a model. That group's modalities provide the opportunity for Member States to object to the participation of an organization but require a vote to determine whether those organizations to which an objection was raised should be excluded. Organizations to which no Member State objects in the first round are automatically authorized to participate in the formal session.⁶

With respect to the modalities of multistakeholder participation in formal sessions, the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the use of Information and Communications Technologies for Criminal Purposes (AHC), could serve as a model. AHC modalities allow multistakeholder participation to include:

- “[A]ttending any open formal session;”
- “Depending on the time available, making oral statements, at the end of discussions by Member States, on each substantive agenda item. Given limited time available at meetings, multi-stakeholders may consider selecting from among themselves spokespersons, in a balanced and transparent way, taking into account the equitable geographical representation, gender parity and diversity of participating multi-stakeholders;”
- “Submitting written materials” with limitations on word count. These submissions are posted in their original language, on the AHC website.⁷

The POA could also consider ways in which to leverage existing expertise and ongoing work at the regional level. Allowing those entities to participate in POA discussions, as stakeholders,

⁶ As articulated in A/AC.278/2011/2 Report of the Open Ended Working Group on Ageing on its organizational Session, Section F, Paragraph 8

⁷ A/AC.291/6 Report of the Ad hoc Committee to Elaborate a Comprehensive International Convention Countering the Use of Information and Communications Technologies for Criminal Purposes on its session on organizational matters held on 24 February 2022, Annex II: Modalities of the participation of multi-stakeholders in the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the use of Information and Communications Technologies for Criminal Purposes, Paragraph 3

would help work at the UN level better integrate with regional efforts and account for specific regional challenges and contexts.

Preparatory Work

The United States acknowledges that establishing a POA will require significant effort from Member States. There should be continued dedicated discussions on the POA, including in the current OEWG, to enable seamless launch of the POA following the conclusion of the current OEWG in 2025.