International law has been, and continues to be, a key topic in United Nations (UN) processes on cybersecurity. This is reflected in the mandates and consensus final reports of the UN Group of Governmental Experts (GGE) and the first Open-ended working group on developments in the field of information and telecommunications in the context of international security (OEWG).

The current multi-year OEWG, in our consensus Annual Progress Report, noted “that States also recalled and reaffirmed that "international law, in particular the Charter of the United Nations, is applicable and essential to maintaining peace, security and stability in the Information and Communication Technology (ICT) environment."”

The current multi-year OEWG presents an opportunity for Member States to build on the consensus that international law applies in cyberspace (an essential part of what is referred to as the acquis) and further develop common understandings and consensus on important aspects of how international law applies in cyberspace.

The current OEWG should build on this acquis on the framework for responsible State behaviour in cyberspace developed and reaffirmed by the GGEs and OEWG and endorsed by the General Assembly.

We recall the recommendation from the 2021 consensus OEWG Report, that “States continue to study and undertake discussions within future UN processes on how international law applies to the use of ICTs by States as a key step to clarify and further develop common understandings on the issue.” That report emphasized the importance of capacity-building in this regard, which remains equally relevant in this OEWG.

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We note the mandate of the current OEWG, which includes reference to international law, and in particular:

“to continue to study, with a view to promoting common understandings... how international law applies to the use of information and communications technologies by States, as well as confidence-building measures and capacity building.”

**Recommendations of the Annual Progress Report 2022**

We welcome the adoption of the OEWG’s first Annual Progress Report (2022) and its recommendation that States engage on focused discussions of specific topics of international law. This approach will enable the OEWG to fulfill its potential as an effective confidence-building measure amongst States and at the same time as an effective capacity-building process on international law.

**Topics for focused discussions on international law**

The reports of previous GGE and OEWG meetings, statements made under the agenda item “international law”, as well as national positions published by Member States are key indicators of what topics the Chair of the OEWG could prioritize in the future Programme of Work of the OEWG.

Based on the non-exhaustive list of topics adopted in the Annual Progress Report in paras. 15 a) & b), and previous GGE/OEWG reports, statements and national positions Canada and Switzerland have the honour to propose the following topics to be included in the OEWG Programme of Work in 2023:

1. The Charter of the United Nations;
2. Peaceful Settlement of Disputes;
3. International Humanitarian Law (IHL), and

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3 [UNGA Res. 75/240.](https://undocs.org/A/RES/75/240)
1. The Charter of the United Nations

The UN Charter has received explicit reference in all GGE and OEWG reports since 2013 (GGE reports 2013, 2015 and 2021, OEWG report 2021 and Annual Progress Report 2022). As part of the acquis, and as noted above, Member States have repeatedly reaffirmed that it “is applicable and essential to maintaining peace and stability and promoting an open, secure, peaceful and accessible ICT environment”. A focused discussion on the application of the rules of the UN Charter should thus be a priority topic for discussion.

2. Peaceful Settlement of Disputes

Since the framework for Responsible State Behaviour in cyberspace was first agreed upon in the 2015 GGE Report and adopted by consensus by the UN General Assembly, the Peaceful Settlement of Disputes as referred to in Art. 2 (3) and Art. 33 of the UN Charter has been a subject of continuous importance. It is regarded as a largely non-controversial, but important, issue. Most States view it as an opportunity to discuss how these rules of international law could contribute to peace and security by providing both an obligation on States and a tool for de-escalation. The topic also aligns with the work of the UNSG on a New Agenda for Peace. Therefore it should be a priority for focused discussion.

3. International humanitarian law (IHL)

The application of IHL to the use of ICTs has been and continues to be a topic of discussion among States. Key principles of IHL or IHL explicitly have been referenced in the reports of the 2015 and 2021 GGEs, as well as the OEWG Annual Progress Report this year. At the July session, a significant number of States stressed that IHL should be one of the priority topics to be discussed, including in a cross-regional joint statement by 17 Member States from all UN regions. The increasing use of ICTs by State and non-State actors in times of armed conflict is of growing concern. Concerns have been expressed about the effective implementation and respect for existing rules and principles of IHL. There is thus a need to discuss in this OEWG how IHL applies to ICT operations during armed conflicts. This will help build common understandings on what actions are prohibited or unacceptable and on how civilians and civilian objects can best be protected in time of armed conflict.

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6 OEWG Annual Progress Report 2022, paras 2, 15 a); 2021 OEWG report, paras 7, 34; 2021 GGE report, paras 25, 69, 70, 71, 71 a), d), e); 2015 GGE report, paras 24, 25, 26, 28, 28 c); 2013 GGE report, para 19.

7 OEWG annual progress report 2022, para 15 a); OEWG report 2021, para 35; GGE report 2021 paras 25, 70, 71 a); GGE report 2015, paras 26, 28 b).


9 OEWG annual progress report 2022, para 15 b) ii); 2021 GGE report, para 71 f); GGE report 2015, para 28 d).
4. State Responsibility

The customary international rules on State responsibility are largely reflected in the draft articles issued by International Law Commission (ARSIWA).\(^{10}\) Since 2013, previous GGE/OEWG reports contain references to the rules on State responsibility.\(^ {11}\) According to statements at the GGE/OEWG meetings and national position papers, these rules also apply to cyber activities.\(^ {12}\) It would thus be timely to address State responsibility through focused discussion in 2023.

Focused Discussions

Recalling the recommendation of the 2022 OEWG Annual Progress Report that States engage in focused discussions on international law topics, as well as the guiding principles for capacity building recommending neutral and objective efforts to build capacity in international law\(^ {13}\), Canada and Switzerland propose that such discussions could include the following:

- Dedicated sessions, both formally and intersessionally, on the specific topics proposed above be included in the 2023 Programme of Work;
- Briefings by States on their national positions on specific topics / Briefings by recognized experts on specific topics, including scenario-based examples of the application of international law to cyberspace;
- Continued capacity-building activities, such as workshops, inter-regional, regional and sub-regional meetings to share best practices and exchange views.

We look forward to continuing the important and productive work of the OEWG process.

Feedback and Comments

Canada and Switzerland welcome feedback and comments from Member States and other concerned stakeholders on the substance of this proposal.

We equally welcome expressions of interest by OEWG delegations, which may wish to partner with us in the further development of this proposal and in its implementation.

Please address comments, suggestions, questions and expressions of interest to:

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\(^{10}\) ILC Draft Articles on State Responsibility, August 2001.

\(^{11}\) 2022 OEWG Annual Progress Report, para 15 a); 2021 GGE report, para 71 g); 2015 GGE report, para 28 e) f); 2013 GGE report, para 23.

\(^{12}\) See for example national positions of Brazil, Japan, Finland, Germany, Netherlands, Estonia, France, Switzerland and Canada.