

**CONSIDERATIONS ON THE INITIAL PRE-DRAFT OF THE OPEN-ENDED
WORKING GROUP (OEWG) ON DEVELOPMENTS IN THE FIELD OF
INFORMATION AND TELECOMMUNICATIONS IN THE CONTEXT OF
INTERNATIONAL SECURITY**

First and foremost, we would like to thank, Ambassador Jürg Lauber, chair of the United Nations Open-Ended Working Group (OEWG) on developments in the field of information and telecommunications in the context of international security, for this initial pre-draft. We believe that it can be constructively improved, and to that end, Cuba would like to submit its considerations to this, the starting point of the OEWG report, which is to be consensually approved in the future.

We noted with satisfaction that the pre-draft includes the concerns raised about the gaps in resilience and high level of vulnerability, including critical infrastructure that many countries face. On the issue of existing and potential threats, we were equally pleased to note that the report presents a tech-neutral approach and that in this sense, it focuses on State behavior, rather than technologies. However, we underline the need to include as another major threat to the development of a peaceful ICT environment, the current and insufficient regulation of private sector activities in the field of ICTs. In this regard, we would like to further stress the central role that the United Nations and its specialized agencies must play in the regulation of the use of these new technologies.

It is also our belief that there should be specific recognition of the fact that malicious use of ICTs could have a detrimental impact on Member State's critical infrastructure, national security, social affairs, and systems, as well as the economy.

We noted with grave concern that the initial pre-draft recognizes, in multiple instances, the automatic applicability of the United Nations Charter in its entirety. It is our belief that, while the principles and purposes enshrined in the Charter are indeed applicable to the ICTs' security dimension; article 51 of the Charter, which legitimizes the right of self-defense, cannot be automatically applied in the event of a cybersecurity incident, nor be used to justify a conventional attack in response. The recognition of the applicability of the "right to self-defense" under Article 51 and the rules for participation in military

conflicts in the context of ICTs, would legitimize the ICT environment as an arena of conflict.

In considering the application of international law to State use of ICTs, we recall that even the 2015 GGE report identified as of central importance the commitments of States to the following principles of the Charter and other international law: 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 State.

Continuing on the matter of the work of the previous GGE reports, we would like to underline that the aforementioned groups were selective in their composition and consequently their recommendations didn't include all the potential views of the United Nations' Members States. Due to these elements, we strongly believe that the conclusions and recommendations of the previous GGEs can be revised and improved upon by the OEWG.

The initial pre-draft also acknowledges the ramifications of the developments in the field of ICTs in the three pillars of the United Nations. While Cuba is firmly committed to the 2030 Agenda and to accomplishing the Sustainable Development Goals (SDGs), we would like to underline that the original pillars of the UN are peace and security, human rights and development as a whole, without any sort of classification.

From our perspective, the initial pre-draft doesn't recognize the different views of the members of the OEWG concerning the applicability of International Humanitarian Law (IHL) in cybersecurity incidents. By acknowledging the applicability of IHL to the security dimension of ICTs, the international community would be recognizing the possibility of armed conflict in this field and therefore contributing to an increase in the present militarization of cyberspace. Furthermore, we consider that in a potential ICT related conflict there would be no need to protect combatants in the field, unless the State in question,

was responding to an ICT attack with conventional weapons, thus legitimizing this misguided and unacceptable approach.

It is our hope that, on the issue of international law, the final and consensually negotiated report will include the different considerations of the members of the OEWG on the matter. However, the initial pre-draft does not. The text presented by the Chair states unequivocally 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*”. This view was submitted, even though multiple members of the OEWG have stressed the need to negotiate and adopt a multilaterally binding framework tailored specifically to State use of ICTs, in the context of international security. We strongly consider that the only possible way to fulfill these “legal vacuums” is to initiate an inclusive and democratic negotiation process that leads to the adoption of a new legally binding instrument, which would complement existing international law.

We were pleased to find that the initial pre-draft included several of the proposals of new norms submitted or expressed by States in the context of the OEWG. In this sense, we would see particularly fit, the inclusion of some of the other norms that were suggested. For instance, that States should exercise jurisdiction over the ICT infrastructure, resources as well as ICT-related activities within their territories (State sovereignty in cyberspace) (China); that the use of ICTs remains exclusively for peaceful purposes (Iran), that it is necessary to ensure the integrity of supply chains (China and Iran) and that there is a need to prevent the militarization of digital space, which is one of our proposals. Moreover, we would also appreciate the inclusion of the norms contained in resolution 73/27 of the United Nations General Assembly, in the pre-draft. These norms already enjoy the support and approval of the majority of the UN members.

We also welcomed the inclusion of the proposal of a global directory of Points of Contact (PoC) in the draft. Cuba echoed this proposal during the first substantive meeting, as well as in its written contribution to the OEWG since we consider that the PoC directory would be a useful tool, particularly in matters of assistance and coordination between governments and CERTS (Cybersecurity Emergency Response Teams).

Cuba, as a developing country, places the utmost attention and priority to the issue of capacity building in the field of ICTs. In this sense, we noted with grave concern that, while the initial pre-draft acknowledges the value of South-South and triangular cooperation, it does little to stress the need for developed countries to enhance their technological and financial assistance to developing countries, in order to improve the latter's emergency response capabilities. Moreover, and concerning the principles which some States believe should guide capacity-building efforts, we would like to stress the fact that the 2011 Busan Partnership for Effective Development Co-operation ("Busan Principles") do not enjoy a universal endorsement and would, therefore, constitute a further source of divide for the OEWG's Members and their future deliberations.

The Open-Ended Working Group is the first forum in which all member States of the United Nations have come together to discuss the issue of developments in the field of ICTs, in the context of international security. Unlike the GGE, the OEWG allows for a broad, if not universal participation, through which all countries are able to express their views on a matter as important as this one. Consequently, we would like to emphasize our rejection of all formulations which attempt to link the work of the OEWG to that of the GGE.

Cuba has always relied on multilateralism as an essential principle for the discussion and advancement of any topic in the United Nations. Hence, we consider that the establishment of an inclusive and consensus-based institutional dialogue is paramount to develop common understandings in ICT security issues. Furthermore, we believe that this dialogue should be primarily intergovernmental in its nature. Taking these aspects into account, we deem necessary that the final report recommends the renewal of the mandate of the OEWG, as currently established, at the 75th session of the UNGA, in order to ensure its continuation.

Finally, it is both regrettable and paradoxical that the pre-draft report proposes to resume the works of the OEWG at the 76th session of the United Nations General Assembly, while at the same time, attempts to extend the work of the GGE, an action which goes far beyond the scope of the OEWG's mandate.