Second round of Informal Meetings, 29, September 2020

—First and foremost, we would like to thank the Chair of the Open Ended Working Group, Ambassador Lauber, his team, and the United Nations Office for Disarmament Affairs for the work you have been doing in these difficult circumstances.

—We support Indonesia’s intervention on behalf of the Non-Aligned Movement and we highlight the validity of the proposals in the working document submitted by the Non-Aligned Movement.

—It is very symbolic that we are holding this second round of informal meetings focused on the theme of international law when we are commemorating the 75th anniversary of having signed the United Nations Charter.

—On this anniversary of the United Nations, in which the world faces a multidimensional crisis, it is urgent to reaffirm our commitment to the principles of International Law and the strengthening of multilateralism and the cooperation among States and with international organizations.

—As we observe the misuse of ICTs, even in times of global crisis, we see the debates occurring within the Open Ended Working Group grow more relevant.
— During the rounds of consultations that have taken place, it has become evident that there are common elements that raise great concern for Member States and other stakeholders involved.

— Some of the major differences are seen in the discussions over the application of International Law, including the International Humanitarian Law and human rights. In this connection, the greatest concern for many countries such as Cuba is the way in which the provisions laid down in the International Law and the UN Charter are reinterpreted with the purpose of manipulating them politically and justifying attacks against sovereign countries.

— 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 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-interference in the internal affairs of other State. Respect for the purposes and principles of the Charter should be a key element in the use of ICTs and an element that cannot be absent in the report.
— In the different versions of the OEWG draft reports and in the meetings and consultations, attempts have been made to impose the idea that the existing obligations under International Law, in particular the Charter of the United Nations in "its entirety", are automatically applicable to the use of ICTs by States. And while the need for greater shared understanding among States on how international law applies to the use of ICTs has been acknowledged, no guidance is presented on how to achieve consensus on this important issue.

— In this regard, our greatest concern lies in the fact that a group of States intends to force the reinterpretation of the International Law in order to legitimize this field as a space for military operations and to automatically use Article 51 of the UN Charter and use force against sovereign States.

— The report cannot in any way legitimize the use of force under any circumstances. Mentions to article 51 should focus on refraining from the threat or use of force in the context of ICT. In our opinion, the only approach that should predominate in the report is the use of ICTs only for peaceful purposes. We are convinced that in this regard, all States can reach consensus.

— We believe that, while the principles and purposes enshrined in the Charter are effectively applicable to the security dimension of ICTs, Article 51 of the Charter, which legitimizes the right to self-defence, cannot be automatically applied in the event of a cybersecurity incident, nor can it be used to trigger “countermeasures” turning the ICT environment into a battlefield, or even less to justify a conventional attack in retaliation.

— The danger posed by this threat is increased by the repeated practice by some of unilaterally attributing the origin of ICT-related incidents, without a detailed, impartial and transparent investigation, devoid of political manipulation.
The subject of attribution, that is, determining the origin of ICT-related incidents, require clarification: How is it determined and who determines it? Should a multilateral mechanism be established for this purpose?

From our point of view, it is not possible to endorse the idea of political attribution when we do not even know how to determine the origin of the incidents. Much less can we accept that it can be answered through military operations.

There is consensus on the application of the purposes and principles of International Law and the UN Charter, but not on how or when they are applied. That's where our efforts should be focused.

Due to the complexity of some issues, consensus may not be reached in some of them, so we consider that it is very important to agree on how the discussion on the use of ICTs in the context of international security will continue in the framework of the United Nations. We advocate continuing the discussions on these topics in an inclusive and transparent forum such as the Open-Ended Working Group.

Cuba considers it important that the Group complete its work with a successful result by consensus, which allows us to move forward and continue discussing this important matter.

In topics where there is no consensus and divisions among the Members are noticeable, we must use a formulation that adequately reflects this difference of opinions. We cannot assume that all States share the same concerns, so all nuances must be reflected.

Our delegation will always maintain a very constructive position to achieve the best possible outcome for all.