

CUBA'S CONSIDERATIONS ON THE SECOND 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 CONSULTATION, JUNE 15th

General remarks:

First and foremost, we would like to thank, Ambassador Jürg Lauber, Chair of OEWG and his team, for their efforts trying to compile the different positions and considerations sent by Members States in their contributions to the initial pre-draft.

Unfortunately, the report does not reflect the positions of the parties in a balanced way. In this regard, we believe that the second pre-draft can be constructively improved, and to that end, Cuba would like to share its considerations:

1. We believe that if it is impossible to negotiate in person in the current situation and the consultations process line by line can be difficult. We need to find a mechanism to ensure that all Members States considerations are included in the report.
2. Whatever the final decision on the third and final substantive session of the OEWG may be, we need to have an effective negotiating process, which unequivocally demands a solid foundation in the form of a draft report that would provide real prospects for compromise and a possibility of working on the language of the text instead of continuing a concept-based discussion on all aspects of the OEWG mandate, with States adhering to their already known positions.
3. We also believe that we need to start the negotiation process in Section A: Introduction, because that is a part of the report, and in our opinion, it establishes some provisions and statements that are yet receive consensus from all Members States.
4. Since the introduction, the text tries to reinforce the idea that the OEWG should be guided by or aligned with the GGE and their reports. Cuba was only able to participate in the last Group of Experts. As a great part of the international community, we did not

participate in the negotiations of the GGE reports in 2010, 2013 or 2015. In this regard, we would like to underline that the aforementioned groups were selective in their composition and consequently their recommendations didn't include the views of all United Nations' Members States.

5. It is once again stated that existing obligations under international law, in particular the Charter of the United Nations in "its entirety", are automatically applied to State use of ICTs. And although it recognizes the need of further shared understandings among States on how international law applies to the use of ICTs, no guidance is presented on how to achieve consensus in this important subject. 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.
6. The text mentions that states had an exchange of views on the relevance and applicability of the humanitarian law, international human rights law and international criminal law. But so far, no consensus has been reached on this subject. By acknowledging the applicability of IHL, as a whole, 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.
7. On the other hand, we recognize the contributions made by the other stakeholders to the process, but we cannot lose sight of the fact that this is an eminently intergovernmental process. We cannot accept any link with other bodies that may duplicate mandates or introduce new topics beyond the scope of OEWG mandate.
8. Finally, it is paradoxical that the pre-draft report resumes 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. We want to reiterate the inherent and clear difference between these groups: the OEWG is universal and inclusive, and the GGE is specific and selective. Therefore, the GGE should be a subsidiary body of the OEWG focused on technical issues.

B. Existing and potential threats.

- a) In general terms, we would like to underline that many paragraphs begins with the word “States” which implies unanimity or consensus which is not always the case. We consider that it is better to use the same format throughout the document, and in order to reflect correctly the different positions, it will be better to use the phrase “A group of states” or “Some states”.
- b) We consider that the concerns expressed by Members States regarding the malicious use of ICTs carried out not only by states actors, but also by non-states actors, should also be taken into account.
- c) We do not favor the inclusion in the report of any approach, which legitimizes the possibility of armed conflict in the field of ICTs and, therefore, promote an increase in the current militarization of cyberspace. It should be included in paragraph 18 that any attempt to militarize the cyberspace is a real and potential threat.
- d) Cuba shares the concerns about the implications of the malicious use of ICTs for the maintenance of international peace and security. In particular, for the covert and illegal use, by individuals, organizations and States, of the computer systems of other nations to attack third countries, for their potential to provoke international conflicts.
- e) The danger posed by this threat is increased by the repeated practice by some of unilaterally attributing the origin of ICT-related incidents, without detailed, impartial and transparent investigation.
- f) We believe that the establishment of a multilateral mechanism accepted by the international community to unequivocally and impartially determine the origin of ICT-related incidents is necessary.
- g) Cuba has always argued that critical infrastructures are essential elements for the social stability and national security of countries, which is why their protection from attacks carried out with the use of ICTs is a priority. However, the absence of a consensual definition on both concepts (critical infrastructures and attacks with the use of ICTs) difficult the international regulation for their protection.
- h) We propose to avoid the use of any concepts whose definition is yet to be defined and approved by consensus.