

Statement by Mr. AKAHORI Takeshi, Ambassador for Cyber Policy of the Ministry of Foreign Affairs of Japan, on the occasion of the virtual informal meeting of the OEWG on ICTs (September 2020)

【International Law】

Japan wishes to extend its gratitude to the Chair, Ambassador Lauber, and the UN Office for Disarmament Affairs for convening this important meeting of the OEWG despite the COVID-19 pandemic. Japan supports the Chair's efforts to continue our dialogue and identify further areas of convergence. Thank you for preparing a well thought draft.

Japan recognizes that it is important for us to promote the rule of law in cyberspace, and welcomes that it is a common recognition that international law, and in particular the United Nations Charter in its entirety, applies to cyberspace. In this regard, Japan would like to request that paragraph 26 be amended to include the three words "in its entirety" after "the Charter of the United Nations".

Based on the fact that the speed at which cyber technology develops is extremely rapid and the creation of new legally binding treaties takes a very long time, first, it is necessary to steadily clarify the interpretation of existing treaties and content of customary international law.

The 2015 GGE report has already confirmed that international law, in particular the Charter of the United Nations in its entirety, which includes the inherent right of States to take measures consistent with international law and as recognized in the Charter, applies and is essential to maintaining peace and stability in the ICT environment. Consequently, the OEWG report should explicitly add "The inherent right of individual or collective self-defense is recognized in the Charter." at the end of paragraph 27.

As an example of existing customary international law, Japan recognizes that basic rules on State responsibility including those on countermeasures applies to cyberspace. In international law, there is no restriction that countermeasures should be limited to the same means as internationally wrongful acts. This is also applicable to countermeasures in cyberspace.

Paragraph 32 and 33 seem to favor the position arguing for the necessity of a legally binding “new instrument”, though many countries including Japan do not see this necessity. Japan is especially concerned that “adapting” international law may roll back the achievement of past GGEs confirming the applicability of existing international law to the use of ICTs by States. Japan requests these paragraphs as a whole be reconsidered to strike better balance between the different views and to reflect the position which emphasizes the need to discuss more about how international law applies. Japan considers that “as it is premature to discuss concrete ways forward to develop binding instrument.” should at least be added at the end of paragraph 33.

Japan considers that the OEWG and the GGE already provide useful fora for Member States to express their national views and practice on how international law applies to the use of ICTs by States. Therefore, Japan believes that it is too early to task out the issue to the ILC, when we had only one year of discussions in the OEWG and the GGE still continues its discussions. Japan requests to delete the relevant paragraph, namely the 4th bullet point under paragraph 74(a).

In other words, my direct answer to the Chair’s question is that we should continue to share national views on international law and deepen common understanding on how international law applies in cyberspace in this OEWG and the GGE. But I have more questions than an answer to some but perhaps for all of us: Why is it not all of us who should discuss, directly representing

member states? Why not now and in the months to come in the existing process? I'm ready and willing to spend many days with you to discuss how international law applies. We could be supported by our legal staff if necessary. Let us discuss substance first, and then procedure. There is a text in front of us. Why not make comments? Why say that we should discuss further later or elsewhere instead of making a five minute intervention on the text in front of us today? I thank the US for reminding us of the importance of reaffirming the applicability of international law in cyberspace and why our collective understanding should be deepened, especially in the context of the purposes and principles of the United Nations. I thank the vast majority of speakers before me for engaging in substance.

I thank you, Chair.