Statement by the representative of the Russian Federation at the online discussion of the second “pre-draft” of the final report of the UN Open-ended Working Group on developments in the field of information and telecommunications in the context of international security
(Moscow, June 15, 2020)

Dear Mr. Chairman,
Dear participants,

Today we face an important task which consists in discussing the draft of the final report of the UN Open-Ended Working Group (OEWG) on the Developments in the Field of Information and Telecommunications in the Context of International Security. However, we would like to start by commenting on a more vital issue that will define the future of the Group – a possible postponement of its final meeting.

We understand how complex the coronavirus situation (COVID-19) is and how dramatic its consequences are. We sincerely regret that due to objective sanitary-epidemical conditions the representatives of the UN Member States were unable to meet in New York to work on the draft OEWG final document.

At the same time, we proceed from the fact that a decision regarding the postponement of the OEWG session and its new dates, substantiated by the epidemical conditions, should be based on an objective assessment of the current situation. According to official data, the situation in many countries, including in the US, is currently stabilizing, improving and getting more predictable. Countries are opening their borders, while international organizations are resuming their activities.

We strongly oppose postponing the OEWG final session upon the initiative of its members. Firstly, it is hard to prejudge that compromise on this issue can be achieved. Secondly, it would be more appropriate if the UN leadership assumed responsibility for initiating and formalizing such a significant decision due to its bureaucratic and administrative nature. In this case it is important to clearly and
sincerely point out the objective reasons for such a decision even if it is conditioned by the severe sanitary-epidemical circumstances in the US that resulted, in general, in a worsened social situation in this country.

It is equally important to be guided by the timing of the UN General Assembly and its First Committee given that the OEWG issues are included in a broader agenda of ensuring international peace and security. By this moment no official information on a possible postponement of the work of these UN bodies has been provided. It would be strange if the UNGA was held normally this year, while the mechanisms that it created were postponed, overcautiously and on an unduly exceptional basis, especially for such a long perspective.

Moreover, the UNGA resolution 73/27 that mandated the establishment of the OEWG ruled that the Group should report to the UNGA 75th session. This is what we should proceed from. In this context the proposal to postpone its submission further to the UNGA 76th session sounds strange and seems to have a hidden agenda. There are no practical reasons for that, since, according to the procedure, this UNGA session will remain open until September next year, and we will still have an opportunity to agree upon the final report.

The OEWG work schedule also demands thorough consideration. Should the Group nonetheless be postponed, it has to continue operating in a working mode. We need to feel in the pause with an effective negotiating process which demands a solid ground 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 the already known positions. This, according to the new timeline set out by the Group’s Chairman, would solely result in fixing the divergences. At the same time, we have no guarantee that the concept-based discussion of the text will conciliate the countries’ approaches, and that within January and February we will be able to agree upon the final report.

According to the initial OEWG schedule by this moment States should have been running to the finish line of the negotiation process and starting to draft the
final report of the Group that should have been elaborated and circulated by the Chairman and his team yet in May, as a result of the previous OEWG discussions. In our view, this document is needed now, not in January, so that we could devote the time left until the end of the mandate specifically to seeking mutually acceptable solutions and language. Otherwise, we run the risk of facing a situation similar to the work of the Group of Governmental Experts (GGE) on Developments in the Field of Information and Telecommunications in the Context of International Security (2015-2017) when excessive philosophical discussions did not permit experts to elaborate a final report.

As for the second version of the draft report, we would like to make the following comments.

First of all, we note that it became longer than the first version of the report. We would like to ask the UN Secretariat to clarify the official requirements for the maximum number of pages of the OEWG final report. This would bring our discussion to reality, mobilize all interested parties to participate in a substantive conversation and to find concrete and mutually acceptable language. Otherwise, we risk facing a situation similar to the work of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (2015-2017) when excessive philosophical discussions did not permit experts to elaborate a final report.

In terms of concept the updated draft report is very close to its initial version and is still far from serving as a basis for compromise. The report does not reflect the positions of the parties in a balanced way, it rather fixes divergences, while little attention is paid to factors and approaches with regard to ensuring international information security (IIS) shared by the international community. Excessive emphasis laid on secondary in terms of the OEWG mandate gender aspects, is mitigated only in part.

We would like to make some specific remarks of critical importance.

Firstly, it is once again stated that the existing universally recognized norms and principles of international law fixed in the UN Charter are fully and
unconditionally applicable to the sphere of information and communication technologies (ICTs). At the same time, the text does not provide for specific modalities of this applicability, in particular, by whom, how, under what conditions they are applicable. These questions remaining unanswered the aforementioned statement is left hanging in the air and cannot be applied in practice. We proceed from the assumption that these practical aspects should be regulated by a specialized universal international legal instrument that would envisage criteria for how the existing norms of international law apply to the use of ICTs and would directly indicate the need for developing new norms. Time is ripe for such steps in regulating the use of ICTs under the current de facto “legal vacuum”.

Secondly, the text still unduly highlights certain branches of international law including international humanitarian law (IHL), international criminal law and international human rights law. In particular, it is absolutely unacceptable that the draft fixes the principle of full and automatic applicability of IHL to the ICT environment in peacetime. The OEWG is neither competent nor authorized to make such statements. It is well known that IHL applies only in the context of a military conflict while currently the ICTs do not fit the definition of a weapon.

Thirdly, we should avoid including in the text the concept of so-called political “attribution” of cyber attacks. We would like to underline that both the 2015 GGE report and the initial set of international rules, norms and principles of responsible States’ behaviour in information space approved by the UNGA resolution 73/27 in 2018 by the overwhelming majority of States, include a common provision that clearly indicates the need to support any accusations against States with appropriate technical evidence; all accusations must be substantiated.

Fourthly, the section on rules, norms and principles of responsible States’ behaviour in information space still lacks priority. There are no references to the UNGA resolution 73/27 that for the first time formalized the initial set of these norms. Instead, the text insistently promotes 11 norms of the 2015 GGE report that were directly and fully reflected in the abovementioned resolution, which gives
them a completely different status than just a call to the States to be guided by them.

In our view, the primary task for all States at this stage is to focus on joint work on universal rules of responsible States’ behaviour in information space, while reaching consensus on elaborating a universal legal framework in the field of IIS is difficult. We would rather suggest to include in the draft report a strong reference to the norms already approved by the majority of the UN Member States set out in the UNGA resolution 73/27 (paragraphs 1.1-1.13), which would contribute to universalizing the understanding of international legal aspects by international community.

Fifthly, the central role of the UN in ensuring IIS is eroded by delegating excessive authority in this field to the regional bodies and organizations. The role of multi-stakeholder model is imposed, with special emphasis laid on the contribution of the private sector, business and academia to ensuring responsible States’ behavior in information space. At the same time, the draft ignores such issues as lack of regulation of the private sector activities in the field of ICTs, as well as the emerging challenge of monopolization of this market as one of the main threats to the development of peaceful and competitive ICT-sphere.

Sixthly, we observe an attempt to reduce real State activities in ensuring IIS to a range of half-measures. The section on recommendations abounds with ideas to create a whole number of “repositories” (databases) on all aspects of the OEWG mandate. We regard this as an attempt to duplicate and minimize the efforts of the international community. What is more, in future such repositories could be used as leverage over countries on sensitive issues, related in particular to their national security. It is of crucial importance to specify in advance under which jurisdiction such new mechanisms will fall and where they will be located, as well as who will bear the expenses of their functioning, who will guarantee the protection of data and have access to it. I will permit myself a comparison: it is impossible to fight COVID-19 by washing hands and practicing hygiene alone.
We also note that the draft report unreasonably includes a number of topics that are not directly related to the issues of ensuring international peace and security that fall within the competence of the UNGA First Committee. The text also includes excessive reference to sustainable development, in particular, its social aspects, human rights and gender equality. The draft itself acknowledges that these topics appertain to other UN bodies.

Finally, the provisions that envisage aligning the activities of the OEWG and the GGE seem groundless and unreasonable. In particular, the draft suggests resuming the OEWG process only during the 76th session of the UN General Assembly, which means suspending the format’s work for a year and a half. In this case, all negotiations on IIS will be de facto outsourced to the GGE. It would make a comprehensive negotiation mechanism within the UN dependent on a narrow and ‘elitist’ expert platform and devalue the OEWG status. We are convinced that this approach is absolutely inappropriate for 119 UN Member States that voted for creating a “cyber-General Assembly” under the UN auspices. The OEWG is not authorized to decide the fate of the GGE. The latter should make recommendations on its future first.

In our view, in order to save the negotiating process on IIS within a medium term perspective and following the procedural requirements to its organization it would be most appropriate to resume the Group’s work in 2021 and to prolong it until 2025 preserving its current mandate.

Thank you for attention.