The Initial “Pre-draft” of the report of the OEWG on developments in the field of information and telecommunications in the context of international security

Preliminary reflection by the Islamic Republic of Iran

April 2020

General observations

1. The Islamic Republic of Iran appreciates the efforts by OEWG Chairman Ambassador Lauber and his team for preparing the initial pre-draft of the report of the OEWG. We also appreciate active participation of the UN member states in the work of the OEWG.

2. The views of the Islamic Republic of Iran on the issues under discussions in the OEWG have been clearly presented through oral statements and interventions in the first and second substantive sessions, and by first¹ and second² written submissions. Responding to a call by the OEWG Chair made in his letter of 11 March 2020, the Islamic Republic of Iran presents hereby its preliminary reflection on the initial pre-draft. As emphasized by the distinguished Chair, we refrain at this stage from addressing the text “line-by-line”.

3. As described by the Chair, the pre-draft, aimed to “serve as the first basis for discussion […] is still a very much a work in progress.” Accordingly, we are very much hopeful that as OEWG proceeds further, the text be further improved to ensure the most accurate account of the views expressed by all participating countries, enabling a consensual forward-looking OEWG report.

4. The international community started to regularly consider ICT developments in the context of international security in 1998 when the corresponding resolution was adopted by the General Assembly. Five GGEs

were established ever since to fulfil mandate given by the consecutive GA resolutions. In 2018, international community agreed to give this mandate to OEWG through resolution 73/27. The sixth GGE was also established in 2018 (resolution 73/266), surprisingly with similar mandate.

5. As emphasized by majority of member states during OEWG substantive sessions, duplication and overlapping shall be avoided in any arrangements. Accordingly, there should be no parallel processes of OEWG and GGE. Given the specialized/technical nature and limited membership of GGEs in the UN system, GGE mechanism may be utilized in the future as a subsidiary\(^3\) to OEWG.

**Specific observations**

6. OEWG is the sole inclusive intergovernmental body in the UN dealing with ICT developments in the context of international security. The OEWG’s mandate exclusively comes from 2018 UN General Assembly resolution 73/27. Surprisingly, the pre-draft establishes its foundation on other resolutions and reports, including GGE reports. The pre-draft should be streamlined with OEWG’s mandate under paragraph 5 of the resolution 73/27.\(^4\)

7. There is an emerging consensus on imperative of peaceful nature of ICT environment. To ensure a successful OEWG process, this is crucial that all states join this consensus. Accordingly, the pre-draft should avoid any language which gives an impression, explicitly or implicitly, that ICT environment, particularly internet, constitute a new battlefield. For instance, reference to recognition of ICT military application (in paragraph 3), and applying the international humanitarian law, which is exclusively for armed

\(^3\) Please see also paragraph 18 below.

\(^4\) “… to continue, as a priority, to further develop the rules, norms and principles of responsible behaviour of States listed in paragraph 1 above, and the ways for their implementation; if necessary, to introduce changes to them or elaborate additional rules of behaviour; to study the possibility of establishing regular institutional dialogue with broad participation under the auspices of the United Nations; and to continue to study, with a view to promoting common understandings, existing and potential threats in the sphere of information security and possible cooperative measures to address them and how international law applies to the use of information and communications technologies by States, as well as confidence-building measures and capacity-building ….”
conflicts, into ICT environment (including in paragraphs 24 and 25) need to be avoided.

8. The pre-draft has acknowledged, in its paragraph 16, “lack of awareness, resilience and adequate capacities” as threats emanating from increased reliance of states on digital technologies. The pre-draft has, however, failed to acknowledge some important corresponding threats, including unilateral coercive measures, monopoly in internet governance, anonymity of persons and things, offensive cyber strategies and policies, etc., which clearly affect awareness, resilience and capacities of the countries. The text needs to reflect these important issues as explicitly raised by some participating states in OEWG.

9. The role of digital platforms and companies and lack of norms for their responsible behaviour in the territories of other states were considered as threats during the OEWG discussions (threats emanating from their being abused as proxies and their serving as tools for hostile propaganda; interference in the internal affairs; violating national sovereignty and security, public order and health; discriminatory treatment towards harmful contents and disinformation; criminal and terrorist purposes,…). The pre-draft should give due account to OEWG discussions on this important issue.

10. Paragraph 27 of the pre-draft correctly reflects the divergent views as to application of existing international law in ICT environment (... it was also noted that there may be a need to adapt existing international law or develop a new instrument to address the unique characteristics of ICTs). Non-Aligned Movement in its Working Paper⁵ submitted to the OEWG’s Chair has also acknowledged the need to identify legal gaps in the international law

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through development of an international legal framework specific to the unique attributes of the ICT environment.

However, the pre-draft seems to be driven to, and by, the assumption that the existing international law is applicable to state’s use of ICTs. This is obvious that the existing international law has not been able to preserve the ICTs peaceful nature. Accordingly, OEWG is expected to continue discussions on “to what extent”, and “how”, the existing international law applies and, more importantly, what kind of international binding instrument, including an ICT-specific convention should be developed.

11. At the current stage, OEWG could continue identifying norms, rules and principles in a way that ensures interests and meets concerns of all states. Certainly, it is premature to discuss the specific secondary rules, including attribution, of ICT environment when its primary rules are pending.

12. Paragraph 32 of the pre-draft addresses the attribution in the ICT environment. Given the fact that attribution is the most challenging issue for the international responsibility of states in ICT environment, and having in mind the letter and spirit of paragraph 1.2 of resolution 73/27, it should be addressed in due time in the context of any ICT-specific legal instrument. The pre-draft and its next versions should reflect this approach as have already been expressed by member states.

13. Section D of the pre-draft (rules, norms and principles) reflects OEWG discussions on voluntary implementation of the 11 norms developed by GGE report of 2015. Although the paragraph 35 of the text refers to resolution 73/27, it misquotes the contents of the resolution ignoring differences between resolution 73/27 and the GGE report. Besides, it ignores part of the OEWG mandate as per paragraph 5 of the resolution 73/27 where OEWG is entitled to “further develop the rules, norms and principles of responsible behaviour of States listed in paragraph 1 above [13 rules, norms and principles not 11], and the ways for their implementation; if necessary, to introduce changes to them or elaborate additional rules of behaviour”.

Accordingly, the pre-draft does not include views expressed by countries (and supported by the resolution 73/27) regarding the need to
review the 13 identified norms before entering the operationalization stage. This should be rectified in the next version of the text.

14. On new norms, pre-draft in its paragraph 38 enumerates some proposed norms suggested by some member states. The Chair has also listed in a non-paper a series of specific norms proposed by some member states, including the Islamic Republic of Iran. While thanking him for invoking this part of OEWG mandate, we would like to see those proposals to be reflected in the next version of the draft enabling the OEWG to consider and discuss them at the later stage.

**Observations on section H (conclusions and recommendations)**

15. As eloquently requested by Non-Aligned Movement, we believe that the recommendations contained in the initial pre-draft should be further reviewed, improved and approved by the OEWG. This should be done in full conformity with OEWG entire mandate given by the resolution 73/27.

16. Some of the recommendations are premature and, in one way or another, subject to pending issues under discussions in the OEWG, such as an ICT-specific legally binding instrument, an agreed list of norms, rules and principles of responsible behaviour, an optimal institutional dialogue, a globally agreed terminology, etc. By the same logic and absent an ICT-specific international legal instrument, recommendations such as establishment of different repositories should be avoided at this stage.

17. The first and foremost recommendation to be made by OEWG to the 75th GA session should be request for renewal of its mandate beyond 2020. This is against the fact that the OEWG sessions so far has proved its value for the international community in addressing the challenges and opportunities associated with the ICT environment in the context of international security.

18. As emphasized by Non-Align Movement, the OEWG’s mandate needs to be renewed enabling it to continue to serve as a regular institutional dialogue mechanism reflecting on the cumulative nature of discussions. OEWG
should continue its functions until an inclusive intergovernmental body for policy and decision making in cyber-related issues is established by the United Nations.

We do believe that OEWG should be able to establish subsidiaries, for instance, to work out the modalities for development and enforcement of norms and rules of responsible behavior of digital platforms and companies, to define globally agreed terminologies, etc.

19. We oppose any recommendation by OEWG to General Assembly for establishment of another GGE in parallel with OEWG. Alternatively, OEWG may request General Assembly to transmit findings of the current GGE, to be submitted to 76th GA session, to OEWG for its consideration.

As mentioned above, this submission is a brief reflection on the initial pre-draft of the OEWG report. The Islamic Republic of Iran will share its detailed views on the whole text when the OEWG resumes its sessions.

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6 Please see also paragraph 4 above.