To: Ambassador Jűrg Lauber, OEWG Chair

Excellency,

I am writing to provide Canada's comments on the OEWG pre-draft report, as requested in your letter dated March 16, 2020. First, let me begin by thanking you, your team and the Secretariat for the work undertaken so far. I would also like to congratulate you for producing this excellent and comprehensive initial draft report in such a timely manner. Canada believes it serves as a very solid basis for discussions and negotiations.

We are providing our main feedback to the initial OEWG draft report in this letter. Our feedback will be divided in 3 parts: 1) elements of the text that we support; 2) elements that we do not support; and 3) initial comments on the proposals in the non-paper on norms, rules and principles. Finally, we have attached a document with additional text proposals, for your consideration. It includes a new version of the draft text on norms implementation that we sent you on March 6.

1. Elements of the draft report that Canada supports

- The introduction is overall excellent. Paragraphs 1-5 provide a concise summary of the acquis of previous GGE reports, which are the foundation on which our current work rests and should be explicitly reaffirmed in any OEWG outcome.

- We completely agree with the sentence in paragraph 7 to the effect that "the OEWG has benefited from exchanges with representatives from inter-governmental organizations, regional organizations, non-governmental organizations, the private sector and academia." Canada would like to see a stronger reference to the request, made by several States, that non-governmental stakeholders play as much of a role as possible in the OEWG process. We respectfully ask that the report of the December multi-stakeholder session be attached as an Annex to the final OEWG report, and that stakeholders' input continue to be reflected meaningfully moving forward. We thank you for your continued leadership in this regard, and we stand by to assist you in any way possible to advance these objectives.

- Canada strongly supports the language on gender in paragraph 9. We have proposed additional language highlighting the importance of gender-related data to drive an evidence-based approach to promoting international cybersecurity.

- In the threats section, we were pleased to see a reference to the importance of gender in paragraph 17. We have proposed additional text to elaborate on this point.

- In paras 22-33, we strongly support the affirmation of the applicability of international law in cyberspace. We are broadly in agreement with the chapeau, as well as with paras 22-26 and 29-33. We believe that greater mention should be made here of the need for, and benefits of,

greater cooperation on national capacity building related to international law. We believe that this would allow more States to participate in continued dialogue on this important topic. We have suggested some text in this regard.

- We strongly support the language in paras 34-35 of the norms section, as well as para 41 of the CBMs section. The CBMs section is overall excellent, although more discussions will need to take place about the universalization of CBMs and the creation of a global Points of Contact list (regional organizations may be able to offer lessons learned in this regard).

- The capacity-building section includes many interesting elements, including those in paras 52, 54 and 56. We would draw your attention to our proposed added text on gender in para 56.

- We thank you for the proposals in the "Conclusions and Recommendations" section. We support some of them, such as the conclusions drawn in paras 66-67, which clearly outline the linkages between the various topics addressed in the report.

- We strongly support the affirmation of the applicability of international law in cyberspace included in para 68a and generally agree with the draft recommendations in this paragraph, with some exceptions and modifications, as outlined below.

- We agree with the recommendations in para 68b and e.

2. Elements of the text that Canada does not support

- Some of the language in paras 15 (on offensive cyber capabilities leading to the "militarization" of cyberspace), 28 (on the need for a legally binding instrument), 32 (on developing a common approach to attribution), 38 (on the need for new norms) and 62 (on the creation of an inter-governmental specialized agency to address cyber issues) is problematic for Canada. While it is correct that certain States expressed these points of view, several others (including Canada) expressed different views during OEWG meetings and/or in writing (our views on some of these issues are outlined in our written response to your questionnaire). It was clear to us during the meeting that this language does not enjoy consensus and that further discussions would be necessary. Our preference would be to remove some of this language that will clearly not reach consensus. At a minimum, in each of these paragraphs, we are suggesting that language be added in the text (see attached document for specific proposals) to reflect the other point of view that we and other States have expressed. That way, the text would offer a more balanced and comprehensive summary of the views outlined by various States on these issues.

- A recurring theme in our comments is that the wording of several text elements that were problematic for us began with wording such as "States said" or "States indicated." This phrasing does not make it clear whether only 1-2 or 15-20 States put forward these views, and whether other States indicated their disagreement. This phrasing could also be interpreted as meaning that there was consensus on these proposals, which was not the case. One way of addressing this comment would be to say "States said" when it appears that there was consensus on an

issue (or when no opposing view was presented), but to say "some States said" and "other States said" to describe issues on which there were divergent views. As you can see reflected in our new text proposals, we suggest that there would be benefit in clearly presenting the other side of the argument in those cases. Doing so would ensures that the range of viewpoints are reflected, and would show, without ambiguity, that the proposal in question does not currently enjoy consensus.

- In the "Conclusions and Recommendations" section, we do not agree with the proposal in para 68a that the ILC conduct a study on the applicability of international law. We believe that this proposal would not attract consensus support, and would be premature at this stage, given that so many States are still developing their national understanding and positions, in part through constructive dialogue in the OEWG and the GGE. In the same vein, we believe that efforts to encourage national submissions should be included, but we should ensure that this is done in a manner that avoids duplication and is not overly onerous for States or the Secretariat. This should focus on national views, not "practice," as including the latter may inhibit States from contributing, given the significance of State practice in the development of customary international law.

- We do not agree with the proposal in para 68d that the Secretary-General establish a global mechanism for enhancing coherence in capacity building efforts in the use of ICTs. We would see this as duplicative of existing mechanisms, such as the Global Forum on Cyber Expertise.

- Given that the proposals outlined in the two bullets above do not currently enjoy consensus, they would need to be further discussed and negotiated before being included as agreed recommendations in the text. We look forward to discussing these proposals further, with a view to hopefully reaching consensus on a meaningful set of recommendations in the final report.

3. Comments on the proposals in the non-paper on norms, rules and principles

- We would not be in a position to support the proposals put forward by Iran, Cuba and China as currently worded. However, we welcome an opportunity to hear these States explain their proposals, and to see if they are open to amendments that could help them reach consensus.

- We are generally supportive with the Netherlands' proposal, as well as the one put forward by Croatia, Finland, France and Slovenia. We may propose drafting changes to those countries directly and/or work with them to see if there are synergies between their proposed text, and Canada's proposed text on norms implementation.

- We would draw your attention to the text on norms implementation proposed by Canada that we have included in the document entitled "new Canadian text proposals." This draft text provides guidance on the implementation and operationalisation of the 2015 GGE norms. Inspired by the 2016-17 GGE's work on this topic, you will see each agreed norm in a box,

followed by practical suggestions for its implementation. This new version of the norms guidance also includes elements on gender that were not present in the previous version that we shared with you on March 6. We would be pleased to have an opportunity to explain this text further to the broader Group and to seek their support for its inclusion in the final report.

Excellency, thank you once again for your hard work in preparing this draft text and for giving us an opportunity to provide feedback. We recognise that the next few months will not be easy, given the challenging circumstances we face due to the COVID 19 pandemic. On this last point, Canada would be open to finding a way to move future intersessional meetings and the July 6-10 meeting until Fall 2020, or whenever circumstances allow these meetings to take place. We are concerned that a virtual final meeting would not allow us to have focused, in person discussions that would allow a strong consensus report to be developed. You can continue to count on Canada's support, and we stand ready to assist you as best we can in the weeks ahead.

Yours Sincerely,

Michael Walma

Director

International Cyber Policy

Global Affairs Canada

Attachment: new Canadian text proposals