

# **Open-ended Working Group on developments in the field of information and telecommunications in the context of international security (OEWG)**

## **Chair's working paper in view of the Second substantive session (10-14 February, 2020)**

### **Preliminary remarks**

The objective of the Second substantive session is for delegations to deepen the discussion of the First substantive session and reflect on various aspects pertaining to the OEWG's mandate in more detail, thereby developing a better understanding of where the Group may eventually find areas of convergence, while also identifying issues that require further discussion. Furthermore, this exchange shall help the Group agree on conclusions and recommendations in the next rounds – informal and formal – of the discussion.

In the following pages, I have tried to consolidate in a very brief and non-exhaustive manner the views and concerns I have heard most frequently under each item of the OEWG's agenda during the First substantive session. I have also formulated a number of questions delegations may consider addressing during the Second substantive session.

Obviously, delegations have the full liberty to discuss these or any other issues within the OEWG's mandate. Your concrete suggestions of elements that need to be added or deepened in our discussions will contribute to the development of a robust pre-draft of our report.

### **General exchange of views <sup>1</sup>**

#### **Chair's take-away from the First substantive session**

Delegations to the OEWG engaged in an initial general exchange of views, with many acknowledging the historic opportunity the OEWG offers for the discussion on ICTs in the context of international security. It was recognized to be of value for the process that the OEWG's work does not start from scratch, but that it can build upon the 2010, 2013, 2015 reports of the Groups of Governmental Experts (GGE). The new (current) GGE and the OEWG should be mutually supportive and avoid contradictions. Several delegations voiced their view that the OEWG's work should be human-centered and guided by principles such as the promotion of an open, secure, stable, accessible and peaceful ICT environment; transparency; trust; and shared responsibility. Some delegations expressed concerns about the proliferation of ICT technologies for malicious purposes, stressing that cyber security incidents hamper the benefits of ICTs. The growing digital divide, including the gender digital divide, were also noted with concern by some. Delegations recognized the wider context and interdependencies of the field of ICTs in the context of international security with other related areas such as cybercrime and cyberterrorism, ICTs in the context of the 2030 Agenda for Sustainable Development, and ICT-related human rights matters including data protection and privacy, freedom of expression, and freedom of information. Some also noted other recent or ongoing processes, such as the Report of the UN Secretary-General's High-level Panel on Digital Cooperation. Some stressed the importance of the exchange with (non-governmental) stakeholders in the discussion, since many of them are key actors in the international cyber-landscape, and possess a high level of technical expertise.

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<sup>1</sup> In light of the extensive general exchange of views at the beginning of the First substantive session the Chair suggests **not** to have another general exchange of views during the Second substantive session.

## **A. Existing and potential threats**

### Chair's take-away from the First substantive session

During the first session of the OEWG, delegations, *inter alia*, reaffirmed the GGE 2015 report's assessment on existing and emerging threats and expressed concern about how cyber threats are increasing in frequency and complexity. Concern was also raised with regard to the gaps in resilience and high level of vulnerability, including of critical infrastructure that many countries face. Different aspects concerning malicious actors, techniques and potential risks posed by new technological developments were highlighted, though many noted that a tech-neutral approach in the OEWG report, focusing on State behaviour rather than technologies per se, was required. The consequences and the impact of cyber operations such as the loss of life, negative impact on government, economies, development, human rights as well as undermining of trust between States were also among the issues raised by delegations.

### Question that delegations may want to address during the Second substantive session

- Are there any existing or potential threats that have not been mentioned in the First substantive session that should be discussed (or require further discussion) in the OEWG?

## **B. International law**

### Chair's take-away from the First substantive session

Under the agenda item entitled "international law", delegations, *inter alia*, reaffirmed on the basis of the 2015 GGE report that international law, and in particular the Charter of the United Nations, is applicable and is essential to maintaining peace and stability and promoting an open, secure, stable, accessible and peaceful ICT environment. Delegations also provided various further views on how international law applies to the use of ICTs by States. Issues raised included principles of international law such as sovereignty, peaceful settlement of disputes, non-interference in the internal affairs of States, use of force, the right to self-defence. Furthermore, international humanitarian law, international human rights law, international criminal law, and principles of customary international law as well as States' responsibilities with respect to internationally wrongful acts were also raised by some delegations.

### Questions that delegations may want to address during the Second substantive session

- Which, if any, are the gaps in international law?
- What would be the appropriate format(s) to address possible gaps in international law?
  - legally binding treaty
  - politically-binding agreements
  - guidance notes fostering common understanding of existing international law
  - other
- Is there a gap in capacity-building on international law that the OEWG could address?
- Should there be a central repository of national practice in the application of international law?

## **C. Norms, rules and principles for responsible State behaviour**

### Chair's take-away from the First substantive session

Under the agenda item entitled “Norms, rules and principles for responsible State behaviour”, delegations, *inter alia*, reaffirmed the voluntary, non-binding norms of responsible State behaviour aimed at promoting an open, secure, stable, accessible and peaceful ICT environment of the 2015 GGE report. Delegations drew attention to the gaps in awareness and operationalization of the existing norms and the need for more guidance to be provided by the OEWG. Some proposals for new norms were raised. The nature of norms, whether they should be voluntary or legally-binding, was also discussed. Delegations highlighted that norms, confidence-building and capacity-building measures were interlinked.

### Questions that delegations may want to address during the Second Session

- Should the OEWG recommend ways to raise awareness of existing norms and commitments? If so, what should those be?
- Should the OEWG recommend ways to improve operationalization of existing norms? If so, what should those be (for example, implementation roadmaps)?
- Is there need at this time for additional norms for responsible State behaviour on issues such as:
  - supply chain neutrality
  - attribution
  - non-interference in internal matters (such as political processes)
  - prevention of escalation
  - media/private sector responsibility
  - protection of the public core of the internet
  - or others
- Should Member States unilaterally declare to refrain from militarization/offensive use of ICTs?
- Could the OEWG usefully further elaborate on the linkages between norms, confidence-building and capacity-building measures?

## **D. Confidence-building measures**

### Chair's take-away from the First substantive session

Under the agenda item entitled “Confidence-building measures”, delegations, *inter alia*, reaffirmed the confidence-building measures set out in the GGE reports. It was recalled that there are several categories of confidence-building measures between States including transparency measures, cooperative measures and stability measures, which include measures of restraint by States. The role of regional organizations in developing and taking forward confidence-building measures was highlighted. The importance of information exchange and dialogue, such as the platform provided by the Open-ended working Group itself, could be considered a confidence-building measure.

### Questions that delegations may want to address during the Second substantive session

- Are there regionally developed confidence-building measures that are ready to be recognized on a global level?
- Are there any new confidence-building measures that the OEWG should consider recommending?

- Is there a need to establish a global repository of existing confidence-building efforts at regional and sub-regional levels?
- Is there a need to establish a global list of Points of Contact?

## **E. Capacity-building**

### *Chair's take-away from the First substantive session*

Under the agenda item entitled “Capacity-building”, delegations, *inter alia*, reaffirmed the capacity-building measures recommended in the GGE reports. A holistic and “two-way street” approach to capacity building was stressed, as was the urgent need to bridge the digital divide. Delegations raised the possibility of identifying principles to guide the provision of capacity-building, such as national ownership, sustainability, non-discrimination, and political neutrality, and noted the important linkages of capacity-building to the Sustainable Development Goals. Some delegations proposed that better coordination was required for capacity-building initiatives and a global coordination mechanism was also suggested.

### *Questions that delegations may want to address during the Second substantive session*

- How can capacity-building be best coordinated on a global level?
- Are there principles of capacity-building which the OEWG could recommend?
- What relevant lessons might be drawn from other matchmaking initiatives under UN auspices that could inform the necessity, practicality and utility of establishing a new mechanism?

## **F. Regular institutional dialogue (RID)**

### *Chair's take-away from the First substantive session*

Under the agenda item entitled “regular institutional dialogue”, delegations, *inter alia*, reaffirmed the importance and urgency of the issue of ICTs in the context of peace and security and in this regard, expressed the need for continued multilateral discussions on the topic. The need to enhance interactions at the regional and the global level was underscored. Delegations stressed the importance of deciding on both the issues to be discussed as well as the format of the discussions. Several proposals were made for how to take forward regular institutional dialogue including through a continuation of the Open-ended Working Group process.

### *Questions that delegations may want to address during the Second substantive session*

- How should a new regular institutional dialogue under UN auspices be constructed in terms of:
  - purpose
  - scope
  - participation (including role of non-State actors)
  - frequency
  - financing
  - other
- How could regular institutional dialogue on ICTs and international security best be coordinated with ICT-related discussions at the United Nations on other topics (such as crime, development, human rights, etc.)?
- Should there be additional formats for multi-stakeholder dialogue?