PERMANENT MISSION OF DENMARK
TO THE UNITED NATIONS

The Permanent Mission of Denmark to the United Nations presents its compliments to the Chair of the Open-ended Working Group on developments in the field of information and telecommunications in the context of international security ("OEWG").

As requested in your letter dated 16 March 2020, the Permanent Mission of Denmark is pleased to submit Denmark's comments to the pre-draft of the OEWG report in the attached document.

The Permanent Mission of Denmark to the United Nations avails itself of this opportunity to renew to the Chair of the OEWG the assurances of its highest consideration.

New York, April 16, 2020

The Chair of the Open-ended Working Group on developments in the field of information and telecommunications in the context of international security,
His Excellency Mr. Jürg Lauber,
The Permanent Mission of Switzerland to the United Nations
633 Third Avenue, 29th floor
New York, NY 10017
United States of America

Denmark's response to the initial "pre-draft" report of the Open-Ended Working Group on developments in the field of information and telecommunications in the context of international security.

With reference to your letters dated 11 and 16 march 2020 The Government of Denmark welcomes the initial "pre-draft" report of the Open-Ended Working Group on developments in the field of information and telecommunications in the context of international security (OEWG). Denmark commends the initiative taken by the Chair, H.E. Jürg Lauber, acknowledging the importance of transparency in the process of reaching the required consensus for the final report. As requested, the feedback is general in nature and as such is not exhaustive. Therefore, Denmark reserves the right to provide further comments later in the OEWG-process.

A. Introduction

1. Following the first and second substantive sessions of the OEWG it is apparent that developments in the field of information and telecommunications technologies (ICTs) in the context of international security is no longer just of concern for a small group of highly digitized UN Member States. Instead, it is a matter of concern for the UN Member States in their entirety. Denmark welcomes the informative exchanges of views at the two substantive sessions of the OEWG as well as the intersessional meeting with Industry Partners, NGOs and academia.

2. Denmark commends the Chair for the emphasis put on the important milestones from the three consensus reports of the United Nations Group of Governmental Experts (GGE) on Developments in the Field of Information and Telecommunications in the Context of International Security from 2010, 2013 and 2015. We have agreed that International law, in particular, the Charter of the United Nations in its entirety, is applicable in cyberspace; we have agreed on 11 non-binding voluntary norms of responsible state behavior; and we have agreed to develop confidence-building measures. As a result, the GGE reports have established a solid foundation for the OEWG, and consequently efforts should be directed at implementation. Member States reiterated this point with near unanimity during the substantive sessions. Therefore, we kindly request that this is more prominently reflected in the OEWG-report.

3. We welcome the recognition of the OEWG as an inclusive platform for all Member States to participate, express their views, and extend cooperation on the international security dimension of ICTs. However, we advise reconsidering the phrase "uniquely" given negotiations taking place in other UN tracks. Instead, we suggest focusing on the OEWG as a confidence building measure (CBM) in itself as reflected later in the "pre-draft" report.

4. We note the OEWG has benefited from exchanges with representatives from inter-governmental organizations, regional organizations, non-governmental organizations, the

private sector and academia. However, we are finding it difficult to see how this is reflected in the "pre-draft" report. Therefore, we suggest dedicating more space to the specific recommendations from the multistakeholder session. Moreover, we would support annexing the informal conclusions prepared by the Chair of the informal multistakeholder session, Mr. David Koh, of Singapore.

B. Existing and Potential Threats

5. Generally, we recommend caution with the use of the phrase "states" due to the unspecific nature of the phrase. However, in section B15 we strongly recommend a rephrasing, since it gives room for the impression that "militarization of cyberspace" was a concern for the majority of Member States. In our view, the dominant concern was the steep increase in the use of ICT technology for malicious purposes and not militarization in itself. We noted among others concerns for election interference, cyber-attacks and cyber-enabled theft of intellectual property by certain states and non-state actors.

6. As such, the OEWG report should more closely reflect what was said by several delegations (including Denmark). Military application of ICTs is a reality. Many UN Member States, including all of the P5, have developed or are developing ICT-capabilities for military purposes. However, this is not a concern as such. What is of concern is that some state actors are using these capabilities in violation of the three pillars of the Charter of the United Nation. Consequently, the OEWG should promote transparency in the development of military ICT-capabilities and states should openly admit to having them at their disposal. Moreover, the technology in itself is often of dual-use, and will continue to develop rapidly. As a result, we should apply a technology neutral approach in the course of our work. This point is emphasized in the GGE reports, and therefore should be further highlighted in OEWG report.

7. In these perilous times during the COVID-19 crisis, we have witnessed even a global pandemic being used for malicious ICT activities. As a result, we encourage the Chair to give room for a section in the OEWG report expressing concern for the potential increase in malicious ICT activity by state and non-state actors during global catastrophes.

C. International Law

8. Denmark supports continuing efforts to promote the application of international law to cyber space including efforts towards clarifying how existing international law applies in cyber space. We share the view that international law is the foundation for stability and predictability in international relations. Specifically we believe that international humanitarian law reduces risks and potential harm to both civilians and combatants in the context of armed conflict, while neither encouraging militarization nor legitimizing conflict.

9. We encourage states to share views on the application of international law to cyber space and national practice of relevance hereto. At this point we believe that focus should be on clarifying the application of existing international law to cyber space, and do not see the need to embark on the establishment of new binding international legal instruments specifically aimed at regulating cyber space. Denmark holds the International Law Commission in high regard and recalls the many foundational contributions it has made to the development and codification of international law. At this point, however, we remain uncertain as to whether recommendations/a request for putting the topic of application of international law to ICTs on the ILCs work program would be the best way of advancing work on this issue, considering the variety of discussions taking place in other fora, the degree of available state practice and the already heavy work program of the ILC.

D. Rules, Norms and Principles

10. We welcome the recall of the consensus resolution 70/237, which calls upon States to be guided in their use of ICTs by the 2015 GGE report, including the 11 voluntary, non-binding norms. However, there was broad agreement among Member States on the need for these norms to be implemented. As such, we recommend a stronger reflection of this in the text of the "pre-draft" report. While we recognize Member States have not been particularly specific on how to ensure this implementation, the report could benefit from proposals of a more concrete nature. We therefore hope the proposal submitted by Australia and Mexico with a broad range of co-sponsors (including Denmark) will be well received.

11. We recognize the ICT environment has changed dramatically since the last report of the GGE in 2015. Nevertheless, for now, we believe the world does not need additional norms. Instead, what we need is states adhering to the ones we already have. This was expressed by several delegations (including Denmark) during the last OEWG-session and should therefore be reflected. While not excluding the possibility for negotiating new norms further down the road, we believe focus of the current OEWG should remain on promoting awareness and understanding of the existing norms and support their operationalization, including through the sharing of best practices in implementation.

E. Confidence-building Measures

12. We welcome the initiative to establish a mechanism to share best practices on Confidence-building Measures (CBMs). We welcome consultation with relevant regional bodies on how to leverage ICT related CBM implementation to the global level. However, duplication of efforts should be avoided where possible.

F. Capacity building

13. Denmark support the way discussions on capacity building are reflected in the "pre-draft" report. Supporting developing countries will be crucial in strengthening the global resilience against malicious ICT activity.

14. We would welcome discussions on the form of a facilitation mechanism. Apart from the financial aspects, this should include how to ensure enhanced coordination with ongoing initiatives. Moreover, it should focus on ensuring UN facilitated capacity building are structured to preserve and promote an open, secure, stable, accessible and peaceful ICT environment as well as human rights and democracy.

G. Regular Institutional Dialogue

15. Denmark welcomes the attempts to reflect the array of opinions and suggestions regarding regular institutional dialogue at the substantive sessions. We recommend emphasizing that no consensus was achieved on purpose, scope, financing etc. and that this will require further discussions unlikely to finish before July 2020. As such, we find the current OEWG premature for specific recommendations regarding regular institutional dialogue.

H. Conclusions and Recommendations

16. Denmark welcomes recommendations enabling practical implementation of the 11 non-binding norms of responsible state behavior and CBMs.

17. As stated above Denmark is uncertain that the involvement of the ILC at this time would be of benefit to the process.

18. While supporting the recommendations on repositories we recommend the establishment of one general repository to avoid duplication of efforts and streamline information gathering.

The Government of Denmark is grateful for the opportunity to comment on the "pre-draft" of the OEWG report. Denmark commends the Chair and the UNODA team for the very constructive efforts in managing the OEWG process, and we look forward to continue the discussions.