COMMENTS FROM ITALY ON THE INITIAL 'PRE-DRAFT' REPORT OF THE OPEN-ENDED WORKING GROUP ON DEVELOPMENTS IN THE FIELD OF INFORMATION AND TELECOMMUNICATION IN THE CONTEXT OF INTERNATIONAL SECURITY

Italy commends the work done by the OEWG Chair and its staff and thanks him for sharing his pre-draft report with Member States.

The document is an excellent basis: it will guide our work in the last part of the mandate. We especially appreciate the efforts to accurately reflect the complexity of the discussions held so far and present and collect concrete proposals for the work ahead of us.

The exercise of providing comments to the pre-draft report takes place in very difficult times. While the world is struggling with combating the Covid-19 pandemic, UNSG Guterres has advocated for an immediate global ceasefire of armed conflicts.   In the digital domain, where open source reports of malicious activities - targeting critical infrastructures such as health care institutions and facilities - are increasing, we should uphold our commitment to promote stability and cooperation in cyberspace. Maintaining and strengthening trust and security in the digital world during the current global health emergency is imperative, as UN USG Fabrizio Hochschild stated, also considering that cyber threats related to the pandemics pose further challenges to our States.

We fully align to the comments formulated by the EU and we would like to share some additional remarks in our national capacity and in the form of general remarks, as requested.

The pre-draft reiterates what we consider as our "fundamentals": the application of all existing international law, including the UN Charter in its entirety, in cyberspace; the adherence to the rules, norms and principles of responsible State behaviour established by the 2015 GGE, which Member States have agreed to use as guidance in the use of ICTs by adopting res.70/237 without a vote; the development of confidence building measures and capacity building programs.

A. General remarks and introduction

Italy deems it useful to clearly remind throughout the document that the OEWG mandate is focused on developments in the field of information and telecommunications in the context of international security and that the Group will be acting on a consensus basis, as it appears in Res. 73/27.

We anticipate that, during the course of negotiations, it might become necessary to set a standard to accept references to documents in the report, i.e. resolutions adopted (and in case there has been a vote with a clear indication of it), treaties, reports by official organs or committees, and ask delegations to comply with such indications.

Italy would like to see the role of other stakeholders more evenly reflected in the report, either by dedicating a specific section in the introduction and in the recommendations, with highlights of both contributions and need for further cooperation for each group of stakeholders (private sector, NGOs, academia and scientists) or by allowing a dedicated paragraph in each thematic section of the report, or both. With regards to private sector, several delegations have singled out the small and medium enterprises that are a source of concern as they are particularly vulnerable while representing the majority of the world's businesses. Finally, we think that the OEWG report should mention and annex the report of the Informal intersessional consultative meeting of the OEWG with industry, non-governmental organizations and academia (2-4 December 2019).

B. Existing and potential threats

Without prejudice of the specific mentions of new threats that the section contains, Italy recalls that several interventions have mentioned that technological advances can have a dual-use application and that is one of the main reasons why our approach should focus on States behaviour and remain technological neutral. The report should reflect those interventions that have supported a tech neutral approach also because innovation happens so fast that listing every single potential threat stemming from new advances increases the risk of uncertainty and incompleteness.

C. International Law

The report gives account of the positions expressed as regards the most discussed question on whether existing international law, complemented by voluntary and non-binding norms, is currently sufficient addressing State use of ICTs, or whether additional instruments are needed. While reiterating that Italy considers that IL, in particular the Charter of the UN in its entirety, fully applies in cyberspace and does not support a call neither for a new binding treaty nor for a political binding committee, Italy suggests that the report reflects more appropriately the support given to this position by a considerable part of the membership. Moreover, we would like the report to better reflect also some additional reasonings underpinning this position, that have been presented during discussions. A drive towards a treaty or political binding commitment as suggested by some States and highlighted in the pre-draft report, will lead to lengthy and divisive negotiations which in turn might provoke uncertainty on the applicability of existing international law during those foreseen negotiations.

We support the proposal to use the annual report of the Secretary General on developments in the field of ICTs in the context of international security as well as the development of a global repository of State practice in the application of international law.

With reference to attribution (para. 32) we reckon the advantages coming from developing a common approach at technical level, however we stress the fact that attribution is a sovereign prerogative.

While reiterating the applicability of existing international law, we also underline the crucial importance to build upon what has already been achieved. Initiatives to move forward may actually lead us to step back, especially in a phase, as the current one, so challenging for multilateralism.

D. Rules, norms and principles for Responsible State Behaviour

The pre-draft report highlights the fundamental importance of rules, norms and principles for Responsible State Behaviour in developing cyber security architecture. In order to increase our stability and predictability, they have to be meaningfully implemented by all States. We reiterate here the importance of the GGE as a platform for discussion at expert level of new rules, norms and principles, while we see the OEWG as instrumental for their operationalization.

In addition, the report should more clearly acknowledge that not only - as the pre-draft points out – do "norms reflect the expectations of the international community regarding the behaviour of States in their use of ICTs": rather, their continuous and widespread application is one of the conditions for the formation of customary international law. Against this backdrop, the term "upgrading" existing norms is misleading and we would refrain from using it. The reason being that in this context either it is referred to customary international law and therefore norms cannot be upgraded, they become binding through time and through their application because they are perceived as binding (*opinio juris ac necessitatis*); or they won't become customary law and it is certainly not the OEWG that can make them change their nature.

E. Confidence Building Measures

The chapter could open by reiterating that there is widespread acknowledgement on the importance of Confidence Building Measures (CBMs) as a means to defuse tension and prevent unintended conflicts stemming from the use of information and communication technology.

We support the idea to move from regional to global, starting from certain CBMs, such as the one establishing National Focal Points of Contact. A network of PoC involving the entire membership of the UN could indeed better address the global challenges arising from the use of ICTs and should be considered as a CBM in itself, and not only a prerequisite for the implementation of CBMs.

In most cases, CBMs have yet to be fully operationalized even at regional level. We therefore support the proposal to share best practices on their implementation, building also on initiatives developed by regional organisations, such as the OSCE and ASEAN, to assist States in translating CBMs into practice. At the same time, we would like the report to include a reference to the need for avoiding duplication and overlapping.

Some of the existing CBMs are based on a multi-stakeholder approach. We see it as an added value, consistent with our position on the need to foster cooperation with the private sector and academia. We would therefore like to see this element reflected in the report as well (para. 47 could be expanded with a reference to CBMs developed by States that require the involvement of the private sector to be fully operationalized).

F. Capacity building

The chapter on capacity building reflects the importance that most States, including Italy, attach to it, as well as the richness of discussions and the membership's expectations on this topic. In fact, Capacity Building can play a crucial role also for the implementation of the 2030 Sustainable Development Agenda. Moreover, the report could further highlight that, at different levels, capacity building is a work in progress for all.

We stress the need to avoid duplication of efforts and, while reckoning it is complicated, we should also consider monitoring the effectiveness of the programs.

The report makes reference to the proposal of establishing a global mechanism aimed at enhancing coherence in capacity building efforts in the use of ICTs, suggested by some States. Such a proposal requires further discussion also on the practical means to realize it. In any case, it should be conceived as a tool to increase coordination and coherence and to avoid duplication. Regional and sub-regional capacity building initiatives should be taken into account. The multi-stakeholder approach of current efforts should also be preserved.

Regarding the principles that should guide any capacity building program, we align to the list proposed by the EU.

The proposal to develop a global capacity building agenda should be further clarified as its scope and aims are not entirely clear. The reference to it as it stands now in the text should be either eliminated or further elaborated upon.

G. Regular institutional dialogue

The report captures the lengthy discussions held around the possibility to establish a regular institutional dialogue as well as the lack of consensus, at this stage, on the way forward.

While sharing the view that substantial and frequent exchanges among Member States are essential, we would like to reiterate that any reflection on the establishment of a regular institutional dialogue is premature and should be based on the achievements of both the OEWG and the GGE, whose mandate expires in 2021. This position, shared by a great number of States, should be appropriately reflected in the text.

The report makes also reference to the suggestion to establish a regular institutional dialogue as a follow up mechanism to a politically binding instrument. However, there is a lack of consensus about negotiating such an instrument and this should be reflected in the text.

H. Conclusions and Recommendation

As stated in the EU document, Italy is supportive of all recommendations aimed at fostering implementation of norms and CBMs. Equally, we encourage the second "pre-draft" report to delineate clearly what would be addressed in the regular work of the Secretary General, such as sharing best practices and national views on the different issues of OEWG's mandate, from the establishment of a global repository, by defining the scope and coordination instruments, including financial aspects.

One of the recommendations contained in the draft refers to the involvement of the International Law Commission. We would like to express our caution about this recommendation: tasking the ILC to undertake a study on how international law applies in the use of ICT at this stage could overlap the important work currently carried out by the OEWG and the GGE.

With regard to international law, we would like also that the report underlines the role that the application of rules, norms and principles of responsible behaviour play in the development of customary international law.

16th April 2020.