"Regular Institutional Dialogue" in the Consensus Reports of the United Nations Groups of Governmental Experts and the Mandate of the OEWG

background paper prepared for the United Nations Open-Ended Working Group on Developments in the Field of Information and Telecommunications in the context of International Security

Through United Nations General Assembly resolutions 73/27 and 73/266, Member States have established two processes addressing international security and the use of information and communication technologies (ICTs): an Open-Ended Working Group (OEWG) open to all Member States and a sixth UN Group of Governmental Experts (GGE) with participants from 25 States.

Both the GGE and OEWG mandates ask these bodies to consider: existing and potential threats, norms of responsible State behaviour, how international law applies, confidence-building measures, and capacity building. The OEWG mandate has an additional element: to continue to study the possibility of establishing regular institutional dialogue with broad participation under the auspices of the United Nations.

The OEWG offers a historic opportunity for all Member States to engage for the first time in substantive discussions at the United Nations on international security and ICTs. States seized this opportunity, with 117 delegations present at the first session of the Working Group in September and over 70 delegations taking the floor. This demonstrated interest and engagement in the work of the OEWG lends particular importance to consideration of the need and mechanism for ongoing dialogue following the end of the OEWG's work in mid-2020.

What have previous GGE reports said about this topic?

At the first session of the OEWG, delegations affirmed that their work "was not starting from scratch" and would build upon the consensus reports of the previous GGEs. In order to support the OEWG in its consideration of regular institutional dialogue, it is useful to consider what previous GGE reports have said about this topic.

Although the term "institutional dialogue" hasn't appeared in any of the GGE mandates, all three of the consensus GGE reports have included recommendations about the need for dialogue among States.

Paragraph 18(i) of the 2010 report[1] called for further dialogue among States, but didn't overtly proscribe the forum or frequency.

> *18. Taking into account the existing and potential threats, risks and vulnerabilities in the field of information security, the Group of Governmental Experts considers it useful to recommend further steps for the development of confidence-building and other measures to reduce the risk of misperception resulting from ICT disruptions: (i) **Further dialogue among States** to discuss norms pertaining to State use of ICTs, to reduce collective risk and protect critical national and international infrastructure;*

In 2013, the GGE recognized that the UN should play "a leading role" in promoting dialogue among Member States to develop common understandings.[2] In recognition that the speed of ICT developments and the scope of the threat merited strengthening cooperation and finding common ground, the GGE recommended regular institutional dialogue with broad participation under the

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[1] See A/65/201
[2] See A/68/98*

auspices of the United Nations, as well as encouraged dialogue in other forums outside the United Nations, including at the bilateral, regional and international levels.

> *13. The **United Nations should play a leading role in promoting dialogue** among Member States to develop common understandings on the security of and in the use of ICTs, encourage regional efforts, promote confidence-building and transparency measures and support capacity-building and the dissemination of best practices.*

> *29. Given the pace of ICT development and the scope of the threat, the Group believes there is a need to enhance common understandings and intensify practical cooperation. In this regard, **the Group recommends regular institutional dialogue with broad participation under the auspices of the United Nations,** as well as regular dialogue through bilateral, regional and multilateral forums, and other international organizations.*

In 2015, the GGE repeated the 2013 recommendations essentially word for word. It qualified these recommendations by recognizing that **further work should not duplicate** that of other international organizations and forums addressing issues such as criminal and terrorist use of ICTs, human rights and Internet governance, yet also recognized that new platforms for bilateral, regional and multilateral dialogue could be established for dialogue, consultation and capacity-building, when appropriate.[3]

> *18. The Group reiterates that, given the pace of ICT development and the scope of the threat, there is a need to enhance common understandings and intensify cooperation. In this regard, the Group recommends **regular institutional dialogue with broad participation under the auspices of the United Nations, as well as regular dialogue through bilateral, regional and multilateral forums and other international organizations**.*

> *33. The **United Nations should play a leading role in promoting dialogue** on the security of ICTs in their use by States and developing common understandings on the application of international law and norms, rules and principles for responsible State behaviour. Further work could **consider initiatives for international dialogue and exchange on ICT security issues**. These efforts **should not duplicate ongoing work by other international organizations and forums addressing issues such as criminal and terrorist use of ICTs, human rights and Internet governance.***

> *35. The Group acknowledges the valuable efforts in ICT security made by **international organizations** and **regional groups**. Work among States on security in the use of ICTs should take these efforts into account, and Member States should, when appropriate, encourage the establishment of **new bilateral, regional and multilateral platforms for dialogue, consultation and capacity-building**.*

Characteristics of regular institutional dialogue

The OEWG's mandate identifies four criteria: "regular" "institutional" "broad participation" "under UN auspices"; the same characteristics identified in in the 2013 and 2015 GGE reports. In its deliberations, the OEWG may wish to further explore each of these criteria in more depth.

- **Regular**—what sort of frequency is desirable for such a dialogue?
- **Institutional**—could regular institutional dialogue be taken up within the existing disarmament machinery, such as within the United Nations Disarmament Commission, through a new subsidiary body, or through the extension or renewal of the Open-Ended Working Group?

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[3] See A/70/174

- **Broad participation**—does broad participation mean the whole UN membership? Or could it be a limited to a subset of UN Member States larger than the GGE format, such as in the Conference on Disarmament, or a body that had a rotating membership? Or is even broader participation desirable, with the active participation of relevant international and regional organizations, the private sector, technical experts, and civil society?
- **Under UN auspices**—the GGE reports recognized the importance of initiatives outside the UN, yet affirmed that they are <u>not an alternative to</u> dialogue under UN auspices. At the same time, the 2015 GGE was firm that regular institutional dialogue should not duplicate other efforts within other international organizations and other forums, specifically on the topics of terrorism, crime, human rights and Internet governance. Thus the scope of regular institutional dialogue is not illimited and should be informed by what is already being addressed by other bodies.

The purpose of regular institutional dialogue

Over the three consensus GGE reports, the purpose of regular dialogue has evolved and shifted from discussing of norms to promoting common understandings on law and responsible State behaviour, as well as promoting information and awareness about CBMs and best practices as well as supporting capacity building.

In the first consensus GGE report of 2010, it was recognized that further dialogue among States was necessary to **discuss norms pertaining to State use of ICTs** in order to reduce collective risk and protect critical infrastructure.[4] Arguably this is in large part what the 2012–2013 GGE took up in its deliberations.

In the 2013 report, the purpose of dialogue among States was expanded to include **promoting common understandings** on the security of and in the use of ICTs, **encouraging regional efforts**, promoting **confidence building and transparency measures**, supporting **capacity-building** and the dissemination of **best practices**.[5]

The 2015 report recommended that dialogue should focus on the **security of ICTs** in their use by States, as well developing **common understandings** on the application of **international law and norms of responsible State behaviour**.[6]

At the first session of the OEWG in September 2019, delegations offered a variety of possible objectives for such dialogue,[7] including:

- Awareness raising and information exchange;
- Strengthening trust and building confidence through dialogue;
- Monitoring and supporting the implementation of existing GGE recommendations;
- Matching needs and resources, for example in capacity building;
- Exchanging good practice on capacity building;
- Further study and discussion on areas where no common understanding has emerged;
- Negotiation of a binding commitment.

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[4] A/65/201, para 18(i).
[5] A/68/98*, para 13.
[6] A/70/174, para 33.
[7] See webcast of the seventh meeting of the first session of the OEWG, 12 September 2019, http://webtv.un.org/search/7th-meeting-open-ended-working-group-on-developments-in-the-field-of-information-and-telecommunications-in-the-context-of-international-security/6085805828001/?term=OPen-ended%20working&sort=date&page=5

Clarity and shared understanding about the objective of regular institutional dialogue could help to both determine its composition and frequency as well as ensure that it serves a unique function. Any mechanism for institutional dialogue will need to fit into the larger ecosystem of discussions, mandates and processes relevant to ICTs within the UN so as to not duplicate other ongoing work, as noted in the 2015 report. This includes other parts of the UN Disarmament Machinery; the work of the Second and Third Committees on topics such as cybercrime and digital development; the work of specialized agencies, departments and subsidiary bodies—including the International Telecommunication Union, the United Nations Office on Drugs and Crime, the Office of Counter-Terrorism, the Human Rights Council and others. A separate background paper prepared for the OEWG offers an overview of the UN cyber ecosystem as it relates to discussions within the Working Group.