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Explanation of Position at the Conclusion of the 2016-2017 UN Group of Governmental Experts (GGE) on Developments in the Field of Information and Telecommunications in the Context of International Security

REMARKS

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Thank you, Mr. Chair.

The UN GGE has had an honorable foundation since 2004. I'm sorry that, despite the efforts of the chair to facilitate the draft and the contributions of experts in the search for consensus, I believe the report falls short of our mandate and doesn't meet the standard that the previous GGEs have set for us.

Throughout the 2016-2017 GGE, I have sought clear and direct statements on how certain international law applies to States' use of ICTs, including international humanitarian law, international law governing States' exercise of their inherent right of self-defense, and the law of State responsibility, including countermeasures. I sought such statements in the interests of international peace and security, based on my strong conviction that the framework of international law provides States with binding standards of behavior that can help reduce the risk of conflict by creating stable expectations of how States may and may not respond to cyber incidents they face. The final draft of the report insufficiently addresses these issues. I believe it would be a troubling and potentially destabilizing signal for this GGE to release a report that does not take a clear position on the applicability of these bodies of international law to States' use of ICTs, much less fulfill the mandate given to this Group by the UN General Assembly to study *how* international legal rules and principles apply to the use of ICTs.

Despite years of discussion and study, some participants continue to contend that it is premature to make such a determination and, in fact, seem to want to walk back progress made in previous GGE reports. I am coming to the unfortunate conclusion that those who are unwilling to affirm the applicability of these international legal rules and principles believe their States are free to act in or through cyberspace to achieve their political ends with no limits or constraints on their actions. That is a dangerous and unsupportable view, and it is one that I unequivocally reject.

During this GGE, I heard repeated assertions on the part of some participants that a discussion of certain bodies of international law, including the *jus ad bellum*, international humanitarian law, and the law of State responsibility, would be incompatible with the messages the Group should be sending regarding the peaceful settlement of disputes and conflict prevention. That is a false dichotomy that does not withstand scrutiny. A report that discusses the peaceful settlement of disputes and related concepts but omits a discussion of the lawful options States have to respond to malicious cyber activity they face would not only fail to deter States from potentially destabilizing activity, but also fail to send a stabilizing message to the broader community of States that their responses to such malicious cyber activity are constrained by international law.

I approached this GGE with optimism and have been encouraged by the productive and serious nature of much of the negotiations. It is unfortunate that the reluctance of a few participants to seriously engage on the mandate on international legal issues has prevented the Group from reaching consensus on a report that would further the goal of common understandings among UN Member States on these important issues. This is particularly disappointing given the work this Group has done in this session to reach common understandings on the implementation of stabilizing measures, including voluntary, non-binding norms of responsible State behavior in cyberspace and confidence-building measures. But our work has been in vain, despite extraordinary efforts from the chair, and I look forward to continuing to work with others on these efforts that are so important to international peace and security. I call on all member states to take this seriously in the future and focus on international law.

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