United States remarks for March 2022 session of the OEWG, as prepared

On international law

- Given the threats we face, it is essential that all states understand how international law applies to states’ use of ICTs and that they uphold their international legal obligations when using ICTs. That includes international obligations under the UN Charter, which requires all Member States to respect the territorial integrity and sovereignty of other States. And in the context of armed conflict, it includes obligations under international humanitarian law, including the principles of necessity, distinction, and proportionality.

- None of this is news. The international community has consistently affirmed that international law, including the UN Charter in its entirety, applies to state behavior in cyberspace, including most recently through its adoption of the 2021 GGE and OEWG reports.

- But even as we sit in this room, one Member State continues to wage an unjustified, unprovoked war of aggression against another Member State, and has used cyber tools in that conflict. It would be unconscionable for us to discuss furthering States’ understanding of how international law applies in cyberspace without acknowledging the stark reality outside this room.

- What is happening now only underscores the vital importance of deepening our shared understanding of how international law applies to State conduct in cyberspace and how we can
work together to ensure that States uphold their international legal obligations in the use of ICTs.

- Among other things, it should be recalled that international law provides a framework for victim states when considering how to respond to another state’s malicious cyber activity. This was reflected in many of the very thoughtful and interesting national contributions on how international law applies in cyberspace that were submitted as part of the last GGE. The Official Compendium of those statements is a remarkable and important achievement, and one that we should build upon going forward.

- International law also guides states on how they should use their own capabilities responsibly, including with respect to protection of civilians in the event of armed conflict. We hope, and we expect, that Member States will respect international law when using ICTs even as we continue to advance our understanding of how international law applies in cyberspace.

- Our common understanding of how international law applies to state behavior in cyberspace has deepened and has been enriched over time.

- Initially, in 2013, we reached consensus on a simple statement confirming its application. The 2015 GGE expanded on that position by providing some explanation of how international law applies, including in the areas of jurisdiction, peaceful settlement of disputes, and human rights. Adding to this body of work, the 2021 GGE affirmed unreservedly the applicability of international humanitarian law to cyberspace and acknowledged that armed conflict can occur in the context of states’ use of cyber capabilities.
• Given all that we have achieved, the United States has modest but important goals for the OEWG on the subject of international law.

• The OEWG should raise awareness of international law’s applicability to state behavior in cyberspace and the related consensus we’ve achieved. The OEWG should also encourage legal and policy capacity building on this issue to help states more fully understand its importance.

• In addition, States should be encouraged to develop and publish national positions on how international law applies to state behavior in cyberspace. Sharing of such national positions is a critical confidence building measure that decreases the risks of misperception and misunderstanding between states. It also contributes to capacity-building as states further develop their own understandings of how international law applies in cyberspace. The OEWG could encourage the creation of a compendium of national positions for ease of access - the UNIDIR cyber policy portal could be used to for such a purpose.

• Given its foundational importance, international law must remain central in our work on the framework of responsible state behavior in cyberspace. We look forward to working with OEWG participants on these issues.