Response to the GCA Utilization Guidelines Open Consultation meeting on 1 March 2021 from Australia, Canada and the UK, endorsed by New Zealand.

We are grateful for the opportunity to add further comments into the process after the open consultation meeting on 1 March. We spoke only once during the open consultation meeting, to introduce our joint contribution. We did not challenge the other views expressed during the open consultation meeting, partly because of time pressures and partly because the open consultation meeting was not set up as a debate or negotiation. Our silence should not be taken as tacit approval of the statements of other participants. We continue to support the views set out in our joint written contribution, which is attached for reference at Annex A.

ITU Council in 2019 decided that the process in which we are participating should be quite limited in scope. We are reviewing the GCA Utilization Guidelines, and that is all. Some of the comments on 1 March suggested that we are reviewing the GCA, which is not the case. We were very surprised to hear comments proposing actions which are related to highly sensitive issues which go far beyond the work and remit of the ITU. The document that is sent to Council must adhere to the mandate that Council 2019 gave to this work. The document must also be fully compliant with the basic texts of the Union and with conference resolutions, notably Plenipotentiary Resolution 130. It might be helpful in future discussions for the secretariat to remind all colleagues of the limited scope of the process and the clear stipulations in Resolution 130 and in particular to remind all colleagues of the matters which are the responsibilities of member states and not the ITU.

There is now a severe risk that a document will be sent to Council that is extremely unlikely to be approved. A number of stakeholders have used this process to raise their opinions on highly sensitive issues that are clearly outside the mandate and scope of this process. Those stakeholders are entitled to their opinions, of course, but the current process has neither the mandate nor the mechanisms to address such highly sensitive issues. We were particularly concerned at comments relating to the role of the ITU within the UN system. For example, it has been suggested that the ITU should begin work on a new international instrument on cybercrime. We wish to be absolutely clear on this point. The appropriate body in the United Nations for discussions relating to a cybercrime instrument or treaty is the Vienna-based United Nations Office on Drugs and Crime (UNODC) under the auspices of the United Nations General Assembly Third Committee. We know of no persuasive argument to the contrary. Also, we fail to see how a process with the very limited mandate to revise the GCA Utilization Guidelines can claim the authority to say that this task should be performed in the ITU instead of in the Third Committee. There is a very wide range of activity within the UN in fora such as the Group of Governmental Experts, the Open-Ended Working Group, the UNODC Open-Ended International Expert Group and the Global Program on Cybercrime. We do not support proposals for the ITU to duplicate this work.

The consultation has shown that there are very strongly held divergent views and it appears increasingly unlikely that Council will be able to find consensus and approve the document. As a

way forward we suggest that the output of the process should be published for information as a report by the Chair of the HLEG. This would allow the outcomes of the process to be captured and published via the ITU website while avoiding a difficult and divisive process of attempting to approve the output.

Contribution by UK, Australia and Canada regarding the GCA Utilization Guidelines

We are grateful for the opportunity to contribute comments on the draft GCA Utilization Guidelines. We look forward to further discussions ahead of Council 2021.

1. There needs to be clarity about the target audience for the Guidelines, and this must be clearly stated in the document sent as input to Council 2021. PP-18 resolved "**to utilize the framework of the ITU GCA in order to further guide the work of the Union on efforts to build confidence and security in the use of ICTs" (Resolution 130, Dubai, Resolves 12)**. This would indicate that the intention of PP-18 was that the GCA Utilization Guidelines would guide the activities of the Union.

2. We also note that PP-18 Resolution 130 is very clear in *Resolves 2* that legal measures relating to cybercrime are a matter for member states and not the ITU. Any element in the guidelines relating to the application of legal measures relating to cybercrime in member states should be deleted.

3. There must be clarification about the relationship between the Guidelines and PP Res 130, WTDC Res 45 and WTSA Res 50, which are the relevant resolutions governing cybersecurity and confidence and security in the use of ICTs in the Union, ITU-D and ITU-T

4. We are very concerned that the document overlaps significantly with issues which are within the remit of the UNGA First and Third Committees. Those bodies are currently undertaking sensitive and delicate discussions related to cybersecurity and cybercrime, as mandated by UNGA resolutions. The ITU is a member of the UN family and has a unique role, but it must not take actions or initiate processes which might undermine the work of the UNGA, notably the First and Third Committees. Given the level of activity under way in the UNGA First and Third Committees we consider it essential that the ITU remains clearly within its specialist remit. In particular, actions related to international cybercrime legislation risk a conflict with other parts of the UN family. The commentary appears outdated and to lack recognition of existing negotiation processes, such as that of the ad hoc intergovernmental committee to develop a new international convention on countering the use of ICTs for criminal purpose

   Comments regarding the detail of the draft guidelines

5. In regards to the detail of the draft guidelines, we offer a set of comments, given below:-
   a. The document should be restructured so as to focus on the key elements, which we take to be the text contained in the boxes. These are currently embedded in a document which includes long and detailed explanation and discussion. The document should be split into two elements. The first, and the key element, is the text of the guidelines themselves. The second element should be the explanatory

text, which could be treated as an annex to the guidelines. We believe that this would make the document more readable and would facilitate easier discussions about the guidelines.

b. Pillar 1 (legal measures). This is a very sensitive area where many issues are solely for member states. We do not believe that **points d, e and f and h** should be included in this document, as the related actions are for member states and not the ITU. **Point h** on cyber sovereignty and lawful intercept is entirely outside the remit of the ITU.

c. Pillar 2(Technical and Procedural Measures). **Point a,** delete after "related technologies" as implementation is for members, not the ITU. In **point d,** it would be better to have the following *"ITU should continue to disseminate ICT security standards. Other standardization bodies and industry groups may, where appropriate and subject to study group approval, choose to submit their work to ITU-T study groups for publication as ITU-T outputs in accordance with formal mechanisms such as ITU-T Recommendation A.25" ("Generic procedures for incorporating text between ITU-T and other organizations)".*

d. In **point e**, we are unclear about what is meant by "a shared global cybersecurity vision". Also, we do not know what "these recommendations" refers to. In **point f**, what is meant by "mutual certification arrangements" is unclear. Is this a reference to existing schemes such as the Common Criteria Recognition Arrangement (CCRA) ? We do not know which framework is referred to in the reference to a "global cybersecurity management framework", and the concept of global cybersecurity management is a very challenging one. Who is responsible for such global management ? We suggest that these unclear references should be deleted.

e. Pillar 5(International Cooperation). **Point e** should be deleted. The ITU's role and status within the UN system is covered in points a and b, We do not understand the reference "to harmonize the UN's internal efforts….." as the ITU has no role in, for example, the very important discussions in the UNGA First Committee relating to cybersecurity.

Comments regarding the document as a whole

6. We also offer a set of comments related to the full document.

a. Paras 6.1.2 and 6.1.3 are to a degree contradictory, in that the need for harmonized action is stated, yet calling for more processes. Duplicating processes will stretch the available expertise, and runs the risk of different processes reaching different conclusions when looking at the same problem, leading to uncertainty and confusion. Here we see a draft ITU document which overlaps with UNGA activities, not least in the discussion of the need for new international cybercrime law, a subject which firmly belongs in the Third Committee.We see no attempt to harmonize this activity within the UN system.

b. Para 2.1 is a statement that we find surprising. Most users of ICTs are likely to be unfamiliar with the legal dimension of cybersecurity. Their level of confidence in

ICTs is likely to be determined by many factors. This paragraph should be deleted.

c. The Tallinn Manual 2.0 is a useful academic document but its inclusion in para 1.19, among references to an international convention and UNGA-mandated bodies is inappropriate. The very brief summary of Tallinn 2.0 "indicating…...regimes" is not helpful and should be removed. It would be better to have a simple paragraph containing the words " Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations was published in 2017" without any interpretive comments.