# Assessing the Current Status of and Prospects for Efforts towards Norm Formation in Cyberspace*
## ─Focusing on the Unfolding "Battle of the Sexes" between the Liberalism Camp and the Authoritarianism Camp─

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**Abstract**

Amid the progress of diverse efforts towards the formation of norms in cyberspace, how to assess the current status of and prospects for the efforts has become an increasingly important issue. This issue is further highlighted by confrontations over the processes for formation of the norms, cybernorm process, between the liberalism camp, which sets freedom and openness (including multi-stakeholder cooperation) as the basis for norms, and the authoritarianism camp, which emphasizes national sovereignty in cyberspace and the control of information by the government. This became noticeable in 2019, and both camps' relations have begun to be perceived as if they are in a "zero-sum" situation. However, this paper argues that the relationships between the two camps can be better explained by a "Battle of the Sexes" model, wherein they continue to coordinate while deepening the confrontation, through empirically examining the model. This paper also argues that a trend towards norm formation based on "sovereignty and control" can be observed in the coordination of both camps.

## Introduction

In recent years, amid the progress of diverse efforts towards the formation of norms in cyberspace, how to assess the current status of and prospects for the efforts has become an increasingly important issue. One reason why the issue attracted much attention can be attributed to the emerging confrontation over the processes for formation of the norms, cybernorm process,[1] between the liberalism camp of Japan, the United States, and Europe, and the authoritarianism camp of Russia and China. The former camp sets "freedom and openness" as the basis for norms. Specifically, the liberalism camp upholds the free flow of information, the freedom of expression, multi-stakeholder cooperation, and the application of existing international laws. On the other hand, the latter camp sets "sovereignty and control" as the basis for norms. That is to say, the authoritarianism camp emphasizes sovereignty in cyberspace and also pursues the formulation of new rules that allow

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1  See below for the Cybernorm Process. Martha Finnemore and Duncan B. Hollis, "Constructing Norms for Global Cybersecurity," *The American Journal of International Law*, Vol. 110, no. 3 (July 2016), pp. 425-479, https://doi.org/10.1017/S0002930000016894.

control of the flow of information by the government.

2019 was a year in which the confrontation between the two camps over the Cybernorm Process was heightened. At the United Nations, the OEWG,[2] which is a new process promoted by Russia and supported by China for discussing norms in cyberspace, was established, and a resolution was also adopted with a view towards creating a United Nations Convention on Cybercrime. In contrast, Japan, the United States, and European countries emphasize the importance of the existing processes of the United Nations' GGE[3] and of the Council of Europe's Convention on Cybercrime (the Budapest Convention), and also formulated a joint document with 28 countries that emphasized their role in advocating for "free, open, and secure cyberspace."[4] Additionally, outside of the United Nations, the GCSC,[5] which embodies multi-stakeholder cooperation and links to Western efforts, has also proposed norms based on existing outcomes such as the GGE.

Amidst such developments, some observers have begun to argue that "[i]nternational institutions have become a battleground for fights between a 'global and open' Internet model and a 'sovereign and controlled' approach."[6] In other words, both camps' relations have begun to be perceived as if they are in a "zero-sum" situation. Theoretically, in such a situation, two camps are "impossible to work together to achieve or maintain a better social state for both sides."[7]

However, there remains room for debate on whether two camps have already been in "zero-sum" situation or not. In general, it can be assumed that both camps would have an incentive to avoid a breakdown and to pursue creating universal norms. Actually, some observers express the view that the competition over norm formation is now not "freedom and openness" or "sovereignty and control," but it has shifted to "how much cyber sovereignty is too much cyber sovereignty?" as even the liberalism camp has begun to emphasize the "sovereignty and control" aspect from the perspective of security.[8] Furthermore, the worst scenario is also presented arguing that foundations of democracy are shaken as the liberalism camp draws nearer to the authoritarianism camp.[9]

In this context, the question is posed: how can the two camps' current relationship be conceptualized? In international regime theory, actors' relationship is conceptualized as the various profit structures (in game theory, such profit structures are explained as games in which each player attempts to maximize its payoff in a given environment), and the structure is expected to be a factor explaining the formation and changing of a regime, which is a set of norms and rules.[10] For example, if there is a structure in which actors' interests are coincided ("harmony"), or

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[2]   Abbreviation for "Open-ended Working Group."

[3]   Abbreviation for "Group of Governmental Experts."

[4]   "Joint Statement on Advancing Responsible State Behavior in Cyberspace," U.S. Department of State, September 23, 2019, https://www.state.gov/joint-statement-on-advancing-responsible-state-behavior-in-cyberspace/.

[5]   Abbreviation for "Global Commission on the Stability of Cyberspace."

[6]   Justin Sherman, and Mark Raymond, "The U.N. Passed a Russia-backed Cybercrime Resolution. That's Not Good News for Internet Freedom," *Washington Post*, December 4, 2019, https://www.washingtonpost.com/politics/2019/12/04/un-passed-russia-backed-cybercrime-resolution-thats-not-good-news-internet-freedom/.

[7]   Yamamoto Yoshinobu, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance] (Yuhikaku Publishing, 2008), p. 78.

[8]   Justin Sherman, "How Much Cyber Sovereignty is Too Much Cyber Sovereignty?" Council on Foreign Relations (CFR) Blog, October 30, 2019, https://www.cfr.org/blog/how-much-cyber-sovereignty-too-much-cyber-sovereignty.

[9]   Alexander Klimburg, *The Darkening Web: The War for Cyberspace* (NY: Penguin Press, 2017), pp. 365-366.

[10]   Yamamoto, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance], pp. 76-78.

if there is a structure in which their interests are in direct conflict ("zero-sum"), then a regime will not be formed.[11] Have the two camps' relations already been in "zero-sum" or "harmony"? Or are they in the middle of coordination searching for common denominator?

This paper argues that the profit structure of both camps can be grasped through the "Battle of the Sexes," also known as "Bach or Stravinsky," where coordination continues while a partial disagreement over preferences is present. Specifically, this paper presents the model of "Battle of Sexes" as the hypothesis explaining the two camps' relations and tests it by conducting case studies. As cases, in light of the purpose of grasping the current situation, this paper selects the significant cybernorm processes developed in 2019: the GGE and OEWG, the adoption of resolutions related to the United Nations Convention on Cybercrime, and the GCSC. Through it, this paper argues that the hypothesis is supported by cases of the GGE and OEWG as well as GCSC. Furthermore, it argues that both camps' coordination, which develops along lines where "freedom and openness" and "sovereignty and control" are the two extremes, is now showing the trend towards norm formation based on "sovereignty and control." As such, this paper highlights that in order to resist this trend, cooperation with non-state actors is further becoming important for the liberalism camp.

Regarding this paper's argument and analysis results, it should be noted that, because this research focuses on the profit structure of the two camps involved in the cybernorm process, there remain challenges in simplifying the complex reality. Needless to say, the positions and attitudes of the actors involved with cyberspace, including the nations within each camp, are not uniform. Additionally, it is also necessary to have a perspective which includes non-state actors, whose importance has been suggested by this research, or the third group of countries called "Digital Deciders,"[12] which do not belong to either camp and have a strong presence in the formation of norms at the United Nations in which one vote per country is a principle. Furthermore, though this paper shows that a "zero-sum" aspect can be observed in the case of the United Nations Convention on Cybercrime related issues, a different argument might be possible when considering the various cases as a series of processes. While recognizing these limitations, the author believes that this paper spotlighting the profit structure between the two camps will add another value to existing studies in development of norms in cyberspace.

From the next section onward, this paper will first show an analysis framework examining the profit structure between the two camps while giving an overview of previous research. Then, in the following two sections, this paper's hypothesis will be examined by case studies. Finally, this paper will conclude by briefly touching on events to be noted when considering the direction for future research, and on the policy challenges therein for the liberalism camp.

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[11]  Ibid. pp. 77-78.
[12]  Robert Morgus, Jocelyn Woolbright, and Justin Sherman, "The Digital Deciders: How a Group of Often Overlooked Countries Could Hold the Keys to the Future of the Global Internet," New America, last updated October 23, 2018, https://www.newamerica.org/cybersecurity-initiative/reports/digital-deciders/.

## 1. Previous Literature Reviews and This Paper's Analysis Framework

(1) Previous Literature Reviews

Norms, or regimes, which are sets of norms and rules, have long been a major research theme in International Relations.[13] Those studies focus not only on the specific content of the norms, but also on when and how norm formation and diffusion advances, as well as the processes for that. The strategies and actions of norm entrepreneurs who influence those processes have also attracted attention. Norm entrepreneurs are not limited to states, and, in particular, how non-state actors such as NGOs[14] can influence even national policy has become an issue.[15]

In recent years, the scope of norms-related studies has also been expanded to the theme of norm formation in cyberspace. Originally, the major focus of this theme has been on the concrete content of norms, such as how to apply international law. However, the necessity of looking at the cybernorm process, including the role of norm entrepreneurs and how norm formation and diffusion advances, has also begun to be raised.[16] Moreover, amidst a situation where a mixture of diverse processes becomes increasingly complex, research that evaluates this situation and examines actors' strategies and actions towards the creation of desirable processes have also developed.

The most recent notable discussion on the evaluation of the current situation is a report from a workshop held by the Carnegie Endowment for International Peace.[17] The report provides a bird's eye view of some of the processes that are currently underway, such as the GGE, OEWG, and GCSC, and examines their interrelationships. According to the current situation where diverse processes coexist, there is concern about forum shopping, wherein actors select the processes that are preferable to them and efforts towards norm formation are fragmented.[18] On the other hand, the report also points out that such multiple processes also have the merit of deepening an understanding of norms, widening a range of participants, or avoiding a situation where confrontation among actors in a specific field leads to a stagnation in overall discussions.[19] The report then argues the need to systemically ensure the mutual complementarity of the various processes in order to strengthen this merit.[20] These discussions give rise to the question of what actors and what benefits are reflected in that mutual complementarity when it builds up. However, this point is not sufficiently discussed in the report.

In this context, the research attracts attention that focuses on competition among various

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[13] See the following for a prominent discussion of norms and regimes. Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization*, vol. 36, no. 2, Special Issue on International Regimes (Spring, 1982), pp. 185-205; Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization*, vol. 52, no. 4 (Autumn, 1998), pp. 887- 917; Yamamoto, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance].

[14] Abbreviation for "Non-Governmental Organization."

[15] Margaret E. Keck, and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca and London: Cornell University Press, 1998); Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization*, vol. 52, no. 3, (Summer, 1998), pp. 613-644.

[16] Finnemore and Hollis, "Constructing Norms for Global Cybersecurity."

[17] Christian Ruhl, Duncan Hollis, Wyatt Hoffman, and Tim Maurer, "Cyberspace and Geopolitics: Assessing Global Cybersecurity Norm Processes at a Crossroads," Carnegie Endowment for International Peace, February 26, 2020, https://carnegieendowment.org/files/Cyberspace_and_Geopolitics.pdf.

[18] Ibid., pp. 13-15.

[19] Ibid.

[20] Ibid.

actors and their strategies regarding the creation of desirable norms in cyberspace. For example, the competition between the United States, Russia, and China around norm formation has been a point of contention.[21] Besides those major powers, so called "Digital Deciders" have also been spotlighted as a significant actor. The American think tank New America classifies the attitudes of countries concerned with Internet governance into three groups, the liberalism camp (the "open and global" camp in the study), the authoritarianism camp (the "sovereign and controlled" camp in the study), and a third group consisting of countries that do not belong to either of them. The study positions this third group as the "Digital Deciders" and argues that, in a structure wherein the two camps are in contention, the policy agenda for the liberalism camp lies with including this third group.[22]

There is also research, primarily in Europe, that generalizes the trends of the actors and understands them through the concept of cyber diplomacy. According to the research that pioneered it, cyber diplomacy means "the use of diplomatic resources and the performance of diplomatic functions to secure national interests with regard to the cyberspace."[23] Cyber diplomacy will be developed to tackle problems that cannot be resolved through technical approaches, such as "cybersecurity, cybercrime, confidence-building, internet freedom and internet governance."[24] Moreover, because the problems cannot be resolved without cooperation with non-state actors, it has been pointed out that cooperation with non-state actors, as well as with other countries, is a policy issue for each country.[25]

These previous studies focusing on the actors' strategies and actions leave room for argument at least in the following two points. First, they overlook the profit structure among the actors who seek to form norms that are desirable to themselves. As stated earlier, this structure is an essential element to pay attention to as a factor in the formation and changing of a regime. Returning to the above mentioned New American research, the liberalism camp and the authoritarianism camp appear to be in a "zero-sum" situation, but, if that is the case, then, in theory, a regime that includes both of them would not be formed. However, it is premature at the current stage to lead such conclusions. Therefore, further study is required that captures the current situation by focusing on the profit structure between the two camps.

Second, there is also the need for a perspective that captures the strategies and actions of non-state actors, who are another important norm entrepreneur. Originally, the central actors in cyberspace are non-state actors, and, even in light of the fact that state actors have gradually strengthened their presence for the purpose of ensuring security, the role of non-state actors cannot be understated. The significance of non-state actors regarding cybernorm developments is well illustrated in Microsoft's advocacy for the formulation of a "Digital Geneva Convention" in

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[21] See the following for example. Klimburg, *The Darkening Web*. Among the studies conducted in Japan, discussions by Tsuchiya Motohiro of Keio University are very helpful. See the following for an example. Tsuchiya Motohiro, *Saiba Sekyuriti to Kokusai Seiji* [Cyber Security and International Relations] (Chikura Publishing Company, 2015), especially Chapter 6.

[22] Morgus, Woolbright, and Sherman, "The Digital Deciders."

[23] André Barrinha and Thomas Renard, "Cyber-diplomacy: The Making of an International Society in the Digital Age," *Global Affairs*, Vol. 3, no. 4-5, 2017, p. 355.

[24] Ibid.

[25] Shaun Riordan, *Cyberdiplomacy: Managing Security and Governance Online* (Cambridge: Polity Press, 2019), pp. 51-52.

2017.[26] Additionally, GAFA (Google, Amazon, Facebook, Apple) also have a large presence, and the role of these non-state actors as norm entrepreneurs is a point of discussion.[27]

In short, to advance studies of norm developments in cyberspace, the profit structure among actors and non-state actors' role should be further examined. Therefore, for example, around norm formation, it is necessary to consider the three-way profit structure of the liberalism camp, the authoritarianism camp, and non-state actors. As such, this paper, as the first step in its research, focuses on the profit structure of both camps and conducts research to understand the current situation. Roles of non-state actors will be briefly touched on in this paper, and the three-way relationship will be examined further in future study.

(2) Analysis Framework

As stated at the beginning, this paper is based on the hypothesis that the profit structure of the liberalism camp and the authoritarianism camp is in a "Battle of the Sexes" situation. The "Battle of the Sexes" in game theory refers to a game in which both players gain more when they cooperate than when they betray each other. There are two types of cooperation, one in which Player A's gain is higher, and another in which Player B's gain is higher, and there will be fierce competition between the players as they aim to maximize their own gains. The feature of this game is that, even if cooperation is such that Player B's gain is high, Player A's gain will be higher when they cooperate than when they betray. When compared to the well-known "Prisoner's Dilemma" game[28] between two players, in which it is "easy to get an agreement, but difficult to keep it,"[29] the difference in the "Battle of the Sexes" is that it is "difficult to get an agreement, but, once an agreement (rule) is made, it is automatically followed."[30]

In this "Battle of the Sexes" game, Table 1 captures the profit structure of the liberalism camp and the authoritarianism camp, and shows the choices for each camp (whether "freedom and openness" or "sovereignty and control" should be the basis for norms) and their gain. The table shows that, in Cell A where the choices of both camps agree, a universal norm based on "freedom and openness" is formed, while in Cell D a universal norm based on "sovereignty and control" is formed. On the other hand, Cell C, where the choices of both camps do not agree, assumes that the liberalism camp forms a norm based on "freedom and openness" and that the authoritarianism camp forms a separate norm based on "sovereignty and control." Similarly, in Cell B, where the choices do not agree, the liberalism camp forms a norm based on "sovereignty and control" and the authoritarianism camp forms a separate norm based on "freedom and openness."

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[26] "A Digital Geneva Convention to Protect Cyberspace," Microsoft, https://www.microsoft.com/en-us/cybersecurity/content-hub/a-digital-geneva-convention-to-protect-cyberspace.

[27] Tim Maurer, "Private Companies Take the Lead on Cyber Security," *War on the Rocks*, May 4, 2018, https://warontherocks.com/2018/05/private-companies-take-the-lead-on-cyber-security/.
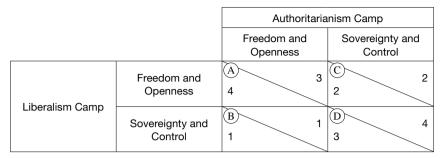
[28] The "Prisoner's Dilemma" refers to a game in which players can maximize their own gain by betraying the other player, but if both players choose betrayal to maximize their own gain, then their gain will be less than if they had cooperated. See below for details, for example. Okada Akira, *Gemu Riron Nyumon (Shinpan): Ningen Syakai no Rikai no tameni* [Introduction to Game Theory: Understanding Human Society (New Edition)] (Yuhikaku Arma, 2014), Chapter 5.

[29] Yamamoto, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance], p. 83.

[30] Ibid.

**Table 1: Profit Structure of the Liberalism Camp and the Authoritarianism Camp, Captured in the "Battle of the Sexes"**

| | | Authoritarianism Camp | |
|---|---|---|---|
| | | Freedom and Openness | Sovereignty and Control |
| Liberalism Camp | Freedom and Openness | Ⓐ 　　 3 <br> 4 | Ⓒ 　　 2 <br> 2 |
| | Sovereignty and Control | Ⓑ 　　 1 <br> 1 | Ⓓ 　　 4 <br> 3 |

(Note): The number to the lower left of the diagonal line in each cell indicates the gain of the liberalism camp, and the number to the upper right indicates the gain of the authoritarianism camp. The higher the number, the greater the gain for each camp.
(Source): Created by the author with references to Yamamoto, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance], p. 78.

Here, this paper will take a closer look at the choices for each camp and their gains. To begin with, in this game, the gains of both camps when the choices are in agreement (Cells A and D), that is, when universal norms are formed, are higher than the gains when different norms coexist (Cells B and C). In fact, it can be said that universal norms are not just desirable for contributing to the stabilization of the relationship between both camps, but are also desirable, for example, for enjoying the services that companies will provide. If the norms that apply in countries and regions differ, then it can be assumed that this will be an obstacle to businesses and that users will not be able to obtain services that would have been realized if there were consistent norms.

Under these circumstances, the liberalism camp's gain is highest when the choices of both camps agree on "freedom and openness" (Cell A), and their next highest gain is when the choices agree on "sovereignty and control" (Cell D). As touched on in the beginning, there are some concerns that the liberalism camp may accept a result of Cell D. However, for the liberalism camp, the choice of "sovereignty and control" not only abandons their principle, but it also betrays the non-state actors[31] who have a strong sense of resistance to "sovereignty and control" and undermines multi-stakeholder cooperation. As such, that choice should be taken cautiously, and, particularly when the choices of both camps are not in agreement and norms are divided, pursuing the liberalism camp's own "freedom and openness" (Cell C) will have higher gains than making a choice that goes against that philosophy (Cell B).

On the other hand, the highest gain for the authoritarianism camp is when both camp's choices agree on "sovereignty and control" (Cell D), and, in seeking universal norms, their next highest gain is when the choices agree on "freedom and openness" (Cell A). In fact, the authoritarianism camp does not necessarily completely deny the need for "freedom and openness." For example, the GGE has the participation of about 20 countries, centered around the United States, the United Kingdom, France, Russia, and China, and in 2015 it set out a norm consisting of 11 items, and one

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[31] This is clearly illustrated in an example of distrust by non-state actors against French President Emmanuel Macron's speech in November 2018 that mentioned the need for certain regulations on the Internet. See below for the details of the speech. *Pari Koru to Makuron Daitoryo no Enzetsu: IGF Pari de Hajimatta Okina Uneri* [Speech by President Emmanuel at Paris Call: The Big Wave that Starts at IGF Paris], *JPNIC*, December 7, 2018, https://blog.nic.ad.jp/2018/2050/.

of the purposes included the promotion of an "open" information and communications technology environment.[32] Furthermore, in 2015 the "International Code of Conduct for Information Security," which was proposed to the United Nations by the Shanghai Cooperation Organization member countries such as Russia and China (excluding India and Pakistan), mentioned respect for freedom in the information space and cooperation with non-state actors.[33] However, it can be said that there are preconditions such as ensuring domestic and national security, and when the authoritarianism camp chooses the "freedom and openness" option, the difficult task of dispelling these concerns must be resolved. And, if a division of norms arises while such issues remain unresolved, then for the authoritarianism camp, there is a higher gain in pursuing "sovereignty and control" (Cell C) than in choosing "freedom and openness" (Cell B).

If the profit structure for both camps is in a "Battle of the Sexes" situation, coordination in a way that avoids a breakdown while still being in sharp confrontation can be observed in the current situation for the cybernorm process, which appears as if it were a "zero-sum." Does the hypothesis hold as expected in concrete cases? If it does hold, then to which direction is the coordination heading between "freedom and openness" and "sovereignty and control"? The next section will conduct the case studies.

## 2. Case Studies

### (1) The GGE and OEWG

The GGE, which was established under the United Nations First Committee (in charge of disarmament and international security issues), is the main cybernorm process for the United Nations, and it has served as a place to consider the norms related to such as responsible state behavior, confidence-building, and capacity building. Cyber-related discussions at the United Nations date back to the adoption of the Resolution on "Developments in the Field of Information and Telecommunications in the Context of International Security," which was proposed by Russia in December 1998.[34] Since then, a similar Resolution, which was a gradual revision of the content, was adopted in response to a proposal from Russia, and the 2001 Resolution included the establishment of the GGE.[35] The GGE has been held intermittently, starting with the first meeting from 2004 to 2005, and the sixth meeting from 2019 to 2021 was the latest one. The number of participating countries was initially 15, but expanded to 20 countries at the fourth meeting and to 25 countries at the fifth meeting.[36]

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[32] United Nations General Assembly (UNGA), 70th Session, Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, p. 7, UN Doc. A/70/174 (July 22, 2015), https://undocs.org/A/70/174.

[33] UNGA, 69th Session, International Code of Conduct for Information Security, para. 7, para. 9, UN Doc. A/69/723 (January 13, 2015), https://undocs.org/A/69/723.

[34] UNGA, 53rd Session, Resolution 53/70, Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc. A/RES/53/70 (January 4, 1999), https://undocs.org/A/RES/53/70.

[35] UNGA, 56th Session, Resolution 56/19, Developments in the Field of Information and Telecommunications in the Context of International Security, para. 4, UN Doc. A/RES/56/19 (January 7, 2002), https://undocs.org/A/RES/56/19.

[36] In addition to the United States, the United Kingdom, France, Russia and China, participating countries consist of countries that are fairly elected from each region.

The GGE has produced concrete results, such as the presentation of the aforementioned 11-item norm, but more than 15 years have passed since its first meeting, and it is facing a difficult phase. At the fifth GGE, discussions on how international law should be applied were not finalized, and a report subject to the consensus of the participating countries did not come to be published. As a result, the GGE was seen as having ended unsuccessfully.

While it was thought that the discussions would be carried over to the next GGE, the situation changed completely. Russia, with the support of China and others, proposed the establishment of the OEWG as a new forum for discussing norms in cyberspace. As a result of a resolution by the United Nations General Assembly in 2018, with 119 countries in favor and 46 countries against (14 countries abstaining), the establishment of the OEWG was decided.[37] The characteristic of the OEWG is that it allows all United Nations member states to participate in the discussions, unlike with the GGE, in order to make the discussions at the United Nations "more democratic, inclusive and transparent,"[38] and it also gives an opportunity to exchange opinions with non-state actors such as NGOs and industries.[39] For Russia and China, it seems that the motive was to strengthen the bargaining power of their own camp by incorporating into the negotiations countries that had a common interest with them in the formation of cyberspace norms but had not been able to fully participate in the discussions at the United Nations.

Japan, the United States, and European countries are now participating in the OEWG, but voted against the proposal. As background for this, it can be said that there were concerns that, in establishing the OEWG, discussions at the GGE would be returned to their starting point and that Russia and China had plans to lead to the formation of norms that were desirable to themselves. Additionally, there might also be apprehension that the bargaining power of the liberalism camp could be reduced if a certain number of countries sided with Russia and China. Therefore, Japan, the United States, and Europe proposed holding the sixth GGE, with 138 countries in favor, 12 countries against, including Russia and China, and 16 countries abstaining.[40] In addition to continuing the discussions up until now, the new GGE has been devised to hold dialogues with regional organizations, such as with the EU[41] and the ARF,[42] as well as to hold informal meetings with all United Nations member states.

(2) Adoption of a UN Resolution with a View towards Formulating a United Nations Convention on Cybercrime

Together with the new establishment of the OEWG, one of the notable events was an adoption of a United Nations resolution with a view towards formulating a United Nations Convention on Cybercrime, which was proposed by Russia and supported by China and others. With 79 countries in favor, 60 countries against, and 33 countries abstaining, the resolution was adopted in

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[37] UNGA, 73rd Session, Resolution 73/27, Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc. A/RES/73/27 (December 11, 2018), https://undocs.org/en/A/RES/73/27.

[38] Ibid., para. 5.

[39] Ibid.

[40] UNGA, 73rd Session, Resolution 73/266, Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, UN Doc. A/RES/73/266 (January 2, 2019), https://undocs.org/en/A/RES/73/266.

[41] Abbreviation for "European Union."

[42] Abbreviation for "ASEAN Regional Forum."

December 2019 at the United Nations General Assembly, calling for the establishment of an "open-ended ad hoc intergovernmental committee of experts" that should "elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes."[43]

There is already the Budapest Convention on Cybercrime, and a total of 66 countries have ratified it so far, including Japan, the United States, and Europe. Although the Budapest Convention leaves room for improvement, it has played an important role as the only legally binding treaty on cybercrime.[44] Additionally, the United Nations also already has an "open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime." These meetings have been held continuously since January 2011, and have been the stage for discussing comprehensive cybercrime countermeasures.

Russia proposed this resolution despite these existing efforts, but Russia's efforts to formulate the United Nations Convention on Cybercrime are not new. Russia has long presented a "Draft Convention on Cybercrime" that emphasizes national sovereignty and governmental control in cyberspace,[45] and an intergovernmental expert committee that is established based on the resolution could be a great driving force to bring the draft to fruition.

Japan, the United States, and European countries strongly opposed such moves by Russia. The introduction of a new process for cybercrime was seen by the liberalism camp as a weakening of existing processes and aiming to create a norm that was convenient for the authoritarianism camp. There were also concerns that it could result in a loss of cyberspace freedom and openness. The United States criticized Russia's proposal, saying that "[i]t will only serve to stifle global efforts to combat cybercrime."[46] Non-state actors also took a severe position. For example, more than 30 organizations jointly called on countries to vote against Russia's proposal, saying that it could "undermine the use of the internet to exercise human rights and facilitate social and economic development."[47]

(3) Publication of the Final Report by the GCSC
In 2019, outside of the United Nations, the GCSC released its final report in November as the fruit of its efforts since 2017. The GCSC is a process that embodies multi-stakeholders, with the Hague Centre for Strategic Studies in the Netherlands and the EastWest Institute in the United States acting as secretariats. The Commission's members include experts from a variety of countries such

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[43] UNGA, 74th Session, Resolution 74/247, Countering the Use of Information and Communications Technologies for Criminal Purposes, especially para. 2, UN Doc. A/RES/74/247 (20 January, 2020), https://undocs.org/en/A/RES/74/247.

[44] Allison Peters, "Russia and China Are Trying to Set the U.N.'s Rules on Cybercrime: At the United Nations General Assembly, the United States Must Push Back Against Their Agenda," *Foreign Policy*, September 16, 2019, https://foreignpolicy.com/2019/09/16/russia-and-china-are-trying-to-set-the-u-n-s-rules-on-cybercrime/.

[45] UNGA, 72nd Session, Draft United Nations Convention on Cooperation in Combating Cybercrime, UN Doc. A/C.3/72/12 (October16, 2017), https://undocs.org/A/C.3/72/12.

[46] "Statement on Agenda Item 107 'Countering the Use of Information and Communications Technologies for Criminal Purposes,'" United States Mission to the United Nations, November 18, 2019, https://usun.usmission.gov/statement-on-agenda-item-107-countering-the-use-of-information-and-communications-technologies-for-criminal-purposes/.

[47] "Open Letter to UN General Assembly: Proposed International Convention on Cybercrime Poses a Threat to Human Rights Online," Association for Progressive Communications, November 2019, https://www.apc.org/en/pubs/open-letter-un-general-assembly-proposed-international-convention-cybercrime-poses-threat-human.

as Russia and China, as well as from Japan, the United States, and Europe. The Committee also has partners and sponsors, with the former including, for example, the Government of the Netherlands and the French Ministry for Europe and Foreign Affairs, and the latter including the Japanese Ministry of Internal Affairs and Communications.

The reason for this mechanism is that the GCSC was established in line with two existing initiatives.[48] The first initiative is the GCIG,[49] which was established in January 2014 through the collaboration of the CIGI[50] in Canada and the Chatham House in the United Kingdom. Behind the inauguration of the GCIG was the concern that the policies of authoritarian countries would threaten the free, open, and universal use of the Internet, and in 2016 the GCIG published its final report, "One Internet," to mark the end of its efforts.[51]

The second initiative is the United Kingdom-led international conference on cyberspace held in 2011. The conference was subsequently called the London Process and held continuously in different cities such as Budapest (2012), Seoul (2013), The Hague (2015), and New Delhi (2017). This process was characterized by multi-stakeholder participation, in contrast to efforts by Russia and China, which emphasized state-centered discussions at international organizations such as the United Nations.

As a form of development of these two processes, the GCSC was formed through the Netherlands' proposition at the 2017 Munich Security Conference, and its final report was published in November 2019. One of the achievements of the GCSC is that, based on existing efforts such as GGE, it proposed a norm consisting of eight items.[52] The norm also included unique elements not found in the GGE, such as the protection of the Public Core of the Internet and the protection of the technological infrastructure that is essential for elections. Another of its achievements was the presentation of a "Cyberstability Framework" that included elements such as multi-stakeholder involvement and adherence to international law.[53] For the practical implementation of these norms and frameworks, the "concerted, global multi-stakeholder effort is required"[54] and the GCSC singles out the significance of its own efforts in giving momentum to that effort.

These achievements are not necessarily beneficial only to the liberalism camp. Rather, it can be understood that the GCSC maintained a distance from both sides and focused on showing the basic matters that both sides should defend in order to secure the profits generated by cyberspace. Nevertheless, the process of embodying multi-stakeholder cooperation is linked to the efforts of the liberalism camp, and some observers point out that it is a more compatible process for the liberalism camp.[55] Thus, it can be said that the process of GCSC reflects the liberalism camp's

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[48]   See the following for GCSC history. "Advancing Cyberstability: Final Report," GCSC, November, 2019, pp. 46-47, https://cyberstability.org/wp-content/uploads/2020/02/GCSC-Advancing-Cyberstability.pdf.

[49]   Abbreviation for "Global Commission on Internet Governance." See the following for an example of GCIG. "Global Commission on Internet Governance," Chatham House, https://www.chathamhouse.org/about-us/our-departments/international-security-programme/global-commission-internet-governance.

[50]   Abbreviation for "Centre for International Governance Innovation."

[51]   "One Internet," CIGI and Chatham House, https://www.chathamhouse.org/sites/default/files/publications/research/2016-06-21-global-commission-internet-governance.pdf.

[52]   GCSC, "Advancing Cyberstability," pp. 21-22.

[53]   Ibid., p. 14.

[54]   Ibid.

[55]   Ruhl, Hollis, Hoffman, and Maurer, "Cyberspace and Geopolitics," p. 10.

motives attempting to strengthen their bargaining power by enhancing cooperation with non-state actors against the authoritarianism camp's growing presence particularly in the United Nations.

## 3. Comprehensive Examination Based on Case Studies

In examining the validity of the hypothesis based on the above case studies, the hypothesis does not hold at present when looking only at the cases adopting resolutions related to the United Nations Convention on Cybercrime, and the profit structure of both camps seems to be a "zero-sum." Japan, the United States, the United Kingdom, Australia, Canada and the EU have already published a comment to the preparatory committee for the upcoming open-ended ad hoc intergovernmental committee of experts that the discussions should be proceeded transparently and based on the consensus of the participating countries, strongly restraining the authoritarianism camp.[56] The committee's future developments are unpredictable, but the two camps are in direct confrontation because of concerns that it could be a process that favors the authoritarianism camp.

However, a "zero-sum" game cannot explain the movements of both camps in regards to the OEWG and the GCSC, and the hypothesis is held in these cases. The reason for this is, first of all, the fact that the two camps continue discussions while confronting each other. Both camps voted against each other in the resolutions for the GGE and for the OEWG, but in the end the liberalism camp participated in the OEWG and the authoritarianism camp participated in the sixth GGE. If both camps had refused to participate in the respective processes, then such a situation could have the consequences of Cell B or Cell C in Table 1, and both camps would miss an opportunity to maximize their gains. If the goal is to maximize gains, then both camps should participate in the respective processes and work to achieve favorable results for themselves (Cell A for the liberalism camp and Cell D for the authoritarianism camp), and this is exactly the profit structure that appears in both camps' participation in the GGE and OEWG.

Furthermore, the validity of the hypothesis is reinforced by the introduction of a mechanism to encourage multi-stakeholder cooperation, which is emphasized by the liberalism camp, into the OEWG, whose establishment was proposed by the authoritarianism camp. Given the position of the authoritarianism camp, which emphasizes the role of the state, it is probable that there was a choice not to allow non-state actors to participate in the OEWG. If that is the case, then the competition with the GCSC process, which embodies multi-stakeholders, is heightened. Given that GCSC can be a process strengthening the liberalism camp's bargaining power, it is not surprising that the authoritarianism camp dared to make such a choice. However, in reality, the authoritarianism camp provided an opportunity for non-state actors to also participate in the OEWG even though it was in the Intersessional Consultative Meeting. This provided the GCSC with an opportune moment to input its results into the United Nations process,[57] which became meaningful as a way to make up for a weakness of the GCSC, which lacked a function to put its recommendations into practice.[58]

In this way, it can be interpreted that the authoritarianism camp is giving a signal that it

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[56] Comments from each country can be viewed on the following site. "Ad Hoc Committee Established by General Assembly Resolution 74/247: Comments from Member States," UN Office on Drugs and Crime, https://www. unodc. org/unodc/en/cybercrime/cybercrime-adhoc-committee.html.

[57] "Global Commission to Host Lunch Session During UN Open-ended Working Group Intersessional Consultative Meeting," GCSC, November 22, 2019, https://cyberstability.org/news/global-commission-to-host-lunch-session-during-un-open-ended-working-group-intersessional-consultative-meeting/.

[58] Ruhl, Hollis, Hoffman, and Maurer, "Cyberspace and Geopolitics," p. 10.

intends to make concessions to or cooperate with the liberalism camp. When applied to Table 1, it can be said that the authoritarianism camp pursued Cell D with the aim of maximizing its own gain, while also inviting the possibility of Cell C. However, there still remain doubts as to whether the OEWG can fulfill its substantive function of promoting multi-stakeholder cooperation, partly because the participation of non-state actors from countries such as Russia and China in the Intersessional Consultative Meeting was limited. It should be noted that, depending on future trends, the competition around the process between both camps may become more acute.

Given that the two camps' coordination proceeds along the line of "freedom and openness" and "sovereignty and control," into which extreme is the coordination heading for? Based on the case studies and previous examinations, it can be observed that the progress of the "Battle of the Sexes" game has been driven by the authoritarianism camp. In particular, Russia, which has led the adoption of various United Nations resolutions, has played an attention-grabbing role as a norm entrepreneur, and it can be pointed out that Russia has skillfully incorporated "Digital Deciders." Such authoritarianism camp's active efforts might imply that a trend towards "sovereignty and control" is growing.

In order for the liberalism camp to resist this trend, it will be a challenge to deepen cooperation with non-state actors while also having a view towards the incorporation of the "Digital Deciders." As was mentioned in the overview of previous research, non-state actors can function as important norm entrepreneurs that also influence national policy, and this is even more true in cyberspace where there are powerful actors such as Microsoft and GAFA. In order to consider this point, it is necessary to have a perspective that captures the relationship among the two camps and non-state actors, which, as stated above, will be an issue for the future.

**Conclusion**

In concluding, this paper will briefly touch on events that will be noted when considering the future issues in this research and the policy issues therein for the liberalism camp.

Firstly, in terms of the need for deepening the cooperation between the liberalism camp and non-state actors, French President Emmanuel Macron put forward the "Paris Call: For Trust and Security in Cyberspace"[59] in November 2018, which should receive attention. The Paris Call sets out nine basic principles for cyberspace norms, building on existing efforts, and also reaffirms the importance of the Budapest Convention. The Paris Call's greatest feature is that it includes nearly 80 nations and more than 700 companies as supporters,[60] and it has the potential to create a major trend of multi-stakeholder cooperation. The liberalism camp will be required to incorporate "Digital Deciders" into this process and balance against the skillful diplomatic tactics that the authoritarianism camp set in the United Nations.

In this context, it is expected that Japan will play a role in incorporating "Digital Deciders." The New America study cites 20 countries as this third group in which the liberalism camp should be strongly involved, given their presence behind the international scene. Indonesia, Singapore, and Malaysia are also listed, and ASEAN shows its presence that should be paid attention to.[61] In fact,

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[59] "Paris Call: For Trust and Security in Cyberspace," Paris Call, November 12, 2018, https://pariscall. international/en/.

[60] Ibid.

[61] Morgus, Woolbright, and Sherman, "The Digital Deciders," pp. 32-34.

ASEAN member countries showed interesting behavior in the resolutions for the establishment of the sixth GGE and for the OEWG. For the sixth GGE, Cambodia, Laos, and Myanmar, which are said to have strong relations with China, abstained, while other ASEAN member countries voted in favor. For the OEWG, all ASEAN countries voted in favor. It can be argued that such voting behavior shows ASEAN's compatibility with the authoritarianism camp's efforts. Against such backdrop, how Japan can leverage a strong relationship with ASEAN for incorporating them into liberalism camp have become Japan's challenge.

Furthermore, even though this paper is focused on norm formation, compliance with norms is also an issue. Theoretically, it is argued that an actor in the "Battle of the Sexes" "has no incentive to deviate"[62] from the established norm, so "no particular device is necessary for them to obey the rules."[63] However, it should be noted here that there is a certain trade-off between the issue of profit sharing as related to norm formation and the issue of the "Prisoner's Dilemma" as related to the compliance with the norm. For example, if the liberalism camp makes concessions and the formation of norms based on "sovereignty and control" progresses, then it may be possible to limit the risk of betrayal by the authoritarianism camp in compliance with norms, and vice versa. Therefore, compliance issues should be paid attention together with norm formation issues.[64] In this context, it is worth noting how the EU's introduction of a cyber sanctions regime in May 2019 will develop, and how the liberalism camp can work together on it.[65]

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[62]  Yamamoto, *Kokusai Rejimu to Gavanansu* [International Regimes and Governance], p. 83.

[63]  Ibid.

[64]  Ibid., p. 82.

[65]  See below for the EU sanctions regime. Patryk Pawlak and Thomas Biersteker, eds., *Guardian of the Galaxy: EU Cyber Sanctions and Norms in Cyberspace*, The European Union Institute for Security Studies (EUISS) Chaillot Paper 155, October 31, 2019, https://www.iss.europa.eu/content/guardian-galaxy-eu-cyber-sanctions-and-norms-cyberspace.