OEWG Virtual Meeting: 2 July 2020

Australian Intervention

Thank you Chair

Given recent developments, I will speak briefly about the threat environment, before moving on to norms.

As many of you may have seen, on 19 June Australia’s Prime Minister, Scott Morrison, gave a statement detailing malicious activity against Australian networks by a sophisticated state-based cyber actor.

This activity is targeting Australian organisations across a range of sectors, including all levels of government, industry, political organisations, education, health, essential service providers, and operators of other critical infrastructure.

We know it is a sophisticated state-based cyber actor because of the scale and nature of the targeting and the tradecraft used.

The Australian Government has not attributed this activity to any country. As Prime Minister Morrison stated, Australia does not make public attributions lightly; the threshold for public attribution is extremely high.

Rather, the purpose/intent of the Prime Minister’s statement was to raise awareness among the Australian community, to ensure that they have appropriate technical mitigations in place and their defences are appropriately raised.

In aid of this, on Tuesday the Australia government announced funding of $1.35 billion over the next decade to enhance Australia’s cyber security capabilities.

As many interventions in this session have reflected, and as Prime Minister Morrison observed, regrettably, this type of activity is not new – but the frequency is increasing.

Australia is not alone. This is a constant threat to Australia, as it is to many other nations.

I raise the PM’s statement today to serve as a reminder that the work of this group is not academic. This is the world that we live in. These are the threats that countries have to deal with on a daily basis.

It has never been more urgent to be clear about the rules of the road for cyberspace.

While it falls to the technical community to secure the infrastructure, it falls to this group to preserve and expand the agreed framework for responsible state behaviour in cyberspace.

Undoubtedly, each country brings its own perspectives to these negotiations. However, from time to time, it is also useful to reflect upon our shared core objective.

Put simply: cyberspace is too big - and too important to every nation - to fail.

Our task in these negotiations is not to identify our areas of difference. Our task is to identify areas of confluence. While this might be challenging, it is not impossible. Regardless of national perspectives, we all have a stake in a peaceful and stable cyberspace.
Australia commends the Chair and Secretariat for the updates to the 2nd OEWG pre-draft report. We support the current structure of the draft, including the order of the sections. We also welcome the language underscoring that norms (which are voluntary and non-binding) do not replace international law (which is binding).

As Iran said last Friday, norms are not a panacea. “Norms” in the context of our discussions should not be confused with a “normative framework”.

Agreed voluntary norms of responsible state behaviour do not standalone. Norms are just one element of the normative framework for responsible state behaviour, which has been endorsed by every UN member state, by consensus.

While we understand the practical need to separate our discussions into discrete topics, it is important to remember that discussing norms separate from international law – or indeed the other elements of the framework – is artificial.

We look forward to discussing this in more detail in the session on international law. For the purpose of this discussion, we underscore that, in addition to norms, we cannot – and must not – forget that, during peacetime and during armed conflict, existing international law provides the means to address many of the threats we have discussed over the course of this first virtual session.

As this group progresses our negotiations, it is imperative that we pay due respect to the entirety of the efforts that have come before us; under Russian leadership over the past 20 years.

I am a cyber-expert. I am not an expert at multilateral negotiations. However, those whose expertise I trust (many of whom are in the “virtual” room with us today) have taught me the value of consensus; that it is a rare and precious commodity, that we should all treat with due reverence.

The 11 norms from 2015 are precious; they are the only norms endorsed by every country in the world.

That said, Australia acknowledges that the 2015 report also states, ‘more norms might be developed over time’.

We also acknowledge that there are proposals for new norms – from countries, and from various organisations.

But until those proposals are negotiated – agreed – and endorsed by consensus, they are not as our Brazilian colleague put it “on an equal footing” to the 11 norms from 2015.

Norms agreed among friends are valuable – but they do not carry the same weight as norms endorsed by every country in the world.

The 11 norms are not the end, but they are rightly our point of departure.

While I don’t want to dwell on this issues, one of the key reasons Australia – and many others - voted against the resolution establishing this OEWG was because we did not support the norms as amended and added too. This hasn’t changed.

However, we are here. We are at the negotiating table. If the two additional norms from the 2018 are important to countries, please consider this a standing invitation to reach out to...
the Australian delegation to talk about how we work to ensure those norms – or other proposals captured in the non-paper - can secure consensus support.

We know, for example, that norm (i) - supply chain - is an important issue for China. Australia has reached out bilaterally to offer to work with China to find language that might engender consensus support.

Likewise, we have heard that Russia has concerns about the reference to “political attribution” in context of attribution and norm (b). We think this is easily addressed, by removing the word “political” from the suggested wording at para C4 of Australia’s written response to the first pre-draft. We remain open to discussing this with Russia.

Australia supports the proposal by Canada to work bilaterally and in small groups to transform this norms non-paper into text that could be incorporated into the report.

Let me be clear, however, that while we will responsively engage and respond in good faith to those who have new norms proposals, Australia’s own proactive priority is not development of new norms, but agreement of guidance on implementation of the existing norms.

This should not be interpreted as no new norms ever. However, we assess that, in the current environment, we will have the biggest impact on international peace and stability if we translate norms “on paper”, into norms “in practice”.

In this regard, Australia is pleased to proposal for protection of health care infrastructure; not as a new norm, but by providing guidance that health infrastructure is critical infrastructure for the purposes of existing norms (f) and (g). I have been heartened to hear broad cross regional support for this proposal.

Chair

There will come a point in these negotiations – hopefully soon, when we move beyond restatements of national positions, and begin the hard task of negotiating language capable of engendering consensus.

Despite differences of views, the shape of that consensus report is beginning to take form. As an example:

- We hear some countries calling for binding norms/binding agreements.
- Australia’s first response is that we have binding agreements: existing international law. Voluntary norms complement but do not replace existing international law, which is binding.
- A counterargument often put is that there are gaps in existing law and norms.
- Australia’s counter response: a) we do not currently see gaps and b) it is difficult to determine if there are gaps when states have not developed and articulated views on how existing international law applies, nor focused on norm implementation.

So, while there may be differing views about the long term objective, we posit that there is logical and common short term goals that we can all support, and which could be reflected as recommendations in the OEWG report: first, countries need to develop and articulate

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1 “The Report should make the distinction between different attribution assessments, including factual attribution assessments (which includes an assessment of technical and other contextual information) and legal attribution assessments (where there has been a breach of international law and/or domestic law), as well as the political decision to act, publicly or privately, on those attribution assessments.”
their national positions on existing international law, and second all countries take stock of norm implementation.

If the OEWG recommends this, and if states act upon this “homework”, it would represent meaningful progress. If countries are committed, this process happen quickly, providing the foundation for whatever it is that will come next.

To be meaningful, all countries need to do this. And capacity building will be required. Again, this is another practical recommendation our report can make.

In this regard, Australia supports the proposal for the OEWG to establish a voluntary survey of national implementation. The voluntary survey would provide practical means to identify best practice implementation, better understand barriers to implementation, identify gaps, and drive more targeted capacity building.

Chair

In conclusion: if we are genuine about finalising a consensus report, then our point of departure must be consensus.

As we look to build up the last consensus agreements from 2015, as Russia has said “we should focus on our areas of convergence, not divergence”.

Postponement of our final meeting; does not mean postponement of our work.

While virtual, the interventions we have made during these sessions have not been too dissimilar to interventions we would have made at an in-person meeting. But what we are missing is the exchanges in the margins; which, let’s be honest, is where the real work happens.

I challenge my fellow delegates to find opportunities to simulate as best we can those conversations in the margins. For Australia’s part, please don’t hesitate to reach out to myself or Briony, or via our mission in New York, to arrange bilateral or small group conversations.

I want to express Australia’s support and confidence in our Chair – anointed by Russia at last session – with loud support from the room – as our “chair for life”, and commend your efforts to steer us through these extraordinary times.

However, I close with a reminder that agreement does not rest with the Chair; it is our collective responsibility. Australia is committed to a consensus outcome of the OEWG. And I am optimistic that we can all rise to the challenge.

Thank you Chair