

“Diplomatic Options for Reinforcing Outer Space Security”

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Diplomacy has sometimes been described as the “art of the possible” and it is clear that the professional inclination of most practitioners is towards pragmatism. Making the most of a given situation taking into account the various factors and actors at play. This orientation is all the more understandable in a multilateral context, where the number of players and the diversity of the interests may be great. That said perceptions of what is possible can change rapidly and an undertaking which seemed improbable one day, can be accepted the next. In the realm of international security diplomacy, these changes in outlook usually are the product of significant external events that alter prevailing threat perceptions or open up new opportunities.

One of the striking features of the outer space security environment is that despite significant growth in the use of outer space for civilian and military purposes over the last half century, the international legal regime governing that space has had almost no development since the Outer Space Treaty of 1967. One explanation for this situation was the belief of at least one major state, that the framework set out in the OST remained sufficient and that there was no existing problem in space security that required further action. This was the position of the Bush Administration and was reflected in the 2006 National Space Policy which indicated that the U.S. should resist efforts to add new elements to the existing international legal regime that might restrict U.S. access or use of space.

This satisfaction with the status quo was not however shared by the international community at large. Indeed with the exception of the U.S. and Israel, UN member states had repeatedly voiced their view that further measures were required to safeguard the current benign environment of outer space and prevent an arms race in outer space. This view was set out regularly in the UN General Assembly’s First Committee (which deals with Disarmament and International Security issues) through the adoption of a resolution on this subject which is referred to by the acronym PAROS (Prevention of an Arms Race in Outer Space). The PAROS resolution which has been introduced each year since the early 1980s and which enjoys near universal support (it was adopted at last fall’s First Committee by a vote of 170 for, 0 against and 2 abstentions –US and Israel) has the following principal elements:

- i) Belief that through PAROS the world can “avert a grave danger for international peace and security”
- ii) The view that CBMs are an important means of attaining PAROS
- iii) Recognition that “the legal regime applicable to Outer Space does not in and of itself guarantee PAROS” and that “there is a need to consolidate and reinforce that regime and enhance its effectiveness”

- iv) Stress on the necessity of further measures with appropriate and effective provisions for verification to prevent an arms race
- v) A call on all states to refrain from action contrary to PAROS
- vi) An invitation to the Conference on Disarmament to establish a working group under its agenda item on PAROS

This in a nutshell represents the general policy guidance on outer space security endorsed by virtually the entire UN membership. It clearly considers the status quo regime on outer space security to be inadequate and calls for action to be taken to strengthen that regime and make it more effective.

More recently, the broad policy direction of the PAROS resolution has been supplemented by a Russian-led initiative to elicit concrete proposals on Transparency and Confidence Building Measures (TCBMs). This resolution again enjoys wide support, having been passed in October by a vote of 167 for, 0 against and 1 abstention (U.S.). Under this resolution various TCBM proposals have been submitted and compiled and this year's resolution authorized the creation of a UN Group of Governmental Experts in 2012 to consider the topic and report back to the General Assembly in 2013. It will be interesting to monitor the results of this exercise, which represents the first step in many years at the UN to operationalize the general support expressed for CBMs as a key element in a PAROS strategy. Since UN GGEs operate on the basis of consensus, however, there would have to be a real convergence of views amongst the experts for any agreed recommendations to emerge.

Such an outcome may well require a change in the position of the leading space-faring power, the United States. While official U.S. positions on outer space security have evolved in a positive direction, moving from outright opposition to mere abstention, they still have not been aligned with the mainstream of international opinion on outer space security. The Obama Administration's National Space Policy, released in June 2010, adopts a rather guarded pose on outer space security. On one hand it proclaims that the United States will pursue TCBMs bilaterally and multilaterally, but fails to elaborate as to the content of the TCBMs it would favour. As for arms control, the National Space Policy states that the United States will consider proposals that meet certain criteria, but refrains from setting out any proposals of its own. Rather than setting forth its own agenda for space security action, the policy suggests that Washington prefers a reactive position limited to evaluating ideas generated elsewhere.

If the general policy line on space security expressed by the international community is clear, the process for its implementation is not so straight forward. Ideally, as the PAROS resolution directs, the 65-nation Conference on Disarmament in Geneva should be the forum to elaborate the further measures envisaged for outer space security. Unfortunately, the procedural impasse at the CD means that this forum has not been able to undertake any official work on PAROS for some 16 years. The CD's Ad Hoc Committee on PAROS was established in 1985 and functioned until 1994. Since then no subsidiary body of the CD devoted to its PAROS agenda item has been agreed. That is not to say that there have not been some interesting proposals or discussions on outer space security at the CD, but these exercises have not been part of any authorised or sustained process of negotiation or

consideration. Given the prolonged blockage at the CD, there is real concern that the current “vicious circle” on PAROS, whereby the General Assembly states that work should be undertaken and then assigns that work to a dysfunctional body, should not be perpetuated. The demonstration of destructive ASAT capabilities by China in 2007 and the U.S. in 2008 as well as the collision of a Russian and U.S. satellite in 2009 have raised anxiety about the preservation of the benign space environment enjoyed by all. These events have also increased interest in exploring some preventative diplomatic options for outer space security.

With the CD spinning its wheels, however, what are the most likely venues and proposals for gaining some global traction on space security? I would like to look briefly at three options for making progress.

The Prevention of Placement of Space Weapons Treaty (or PPWT) – this is at present the only draft space security treaty officially before the international community having been formally tabled at the CD in 2008 although preliminary versions were introduced in 2002. Its co-sponsors, Russia and China, have argued that it represents the best way of ensuring the non-weaponization of outer space and would like to see work commence on it in the CD as soon as possible. After several years when Russia and China were holding out for a negotiating versus a discussion mandate in the CD for this treaty, the two lead sponsors have indicated that they would be satisfied initially simply to have the CD consider the draft. Russia has been active in soliciting views on the draft treaty text, although these have not yet resulted in any revised version of the text. Criticisms of the draft treaty have included its lack of constraints on ground-based systems and the absence of verification provisions. China has recently been less active in promoting the treaty. Its credibility as a proponent of non-weaponization of space has also suffered from its 2007 ASAT action although some interpret this step as a warning shot that in the absence of engagement on outer space arms control, these damaging actions could become more common in future. Given that a treaty for the non-weaponization of outer space is dear to the heart of many states, this type of agreement, if not its exact content, remains the preferred classic option for those favouring further legally-binding measures. Importantly however neither Russia nor China has as of yet suggested that the draft treaty be taken up somewhere other than the CD. Russia seems more open to such an eventuality than does China. If one of the co-sponsors begins to advocate that an alternative forum negotiate the treaty this could lead to a break-up of the Sino-Russian partnership on space security. It should be recalled that other ways of realising a ban on space weaponization have been suggested in the past, including adding a Protocol to the Outer Space Treaty which would extend its prohibition on WMD to all types of weapons.

The EU Code of Conduct: In December 2008, the EU after extensive consultations adopted a draft Code of Conduct for Outer Space Activities as a basis for further discussion with external partners. In October 2010 the EU approved a revised version of the Code and reference was made to the convening of a diplomatic conference at which states would be invited to subscribe to the Code. In February 2011 an EU representative speaking at the CD said that consideration was being given to organising a multilateral experts meeting in 2011 to prepare for the ad hoc diplomatic conference. It is noteworthy that the EU has not officially submitted the Code to the CD and its espousal of a distinct diplomatic conference would of course take it outside that body with its problematic rules of procedure. The Code is a

deliberately modest, political text that would encourage greater cooperation amongst states on the use of space. The voluntary measures espoused in the Code are of a general nature and to a large extent simply reaffirm existing international instruments concerning outer space. The emphasis is as much on the safety of space operations, as it is on space security and hence the specific measures focus on steps such as collision avoidance and debris mitigation, that apply as much to civilian as to military activity in outer space. Some relatively 'soft' TCBMs are included in the Code such as notification of orbital changes and re-entries, scheduled manoeuvres and the exchange of information on national space policies, strategies and procedures. There is also provision for consultations among subscribing states to the Code if there is a belief that activities "contrary to the purposes of the Code" have been conducted. Significantly, U.S. officials have recently stated that they are giving the Code close consideration to determine whether Washington would be ready to subscribe to it. The political nature of the Code and its relatively modest provisions will make it attractive in some quarters as a largely symbolic gesture uncomplicated by ratification requirements. However, the lack of real constraining measures, the "made in the EU" label and the parallel with the Hague Code of Conduct on Ballistic Missiles with its unsatisfactory record of compliance, may leave other states remaining cool to the Code as the right vehicle for advancing multilateral space security goals.

Other TCBMs: Russia has been at the forefront of encouraging the development of TCBMs and has made several proposals of its own. Many overlap with the EU's Code in terms of notification and information exchange, although some go further such as exchanges on "foreseeable dangerous situations in outer space" and the invitation of observers to spacecraft launches. While the Chinese have stressed that TCBMs are no substitute for a non-weaponization treaty, Russia has not been so categorical and its lead on the TCBM front suggests that it would be willing to settle for agreement on TCBMs as an initial step towards achieving a more collaborative outer space security regime. Canada has contributed to the outer space security debate by suggesting that states agree to some specific security pledges. Namely, a pledge not to place weapons in outer space, not to engage in destructive ASAT testing and not to use a satellite as a weapon. These ideas are seen to represent a middle ground between the non-weaponization treaty on one hand and the "security-lite" character of the measures contained in the EU code on the other. While the Canadian ideas were framed as "pledges" and with explicit references to similar assurances already given by representatives of Russia, the U.S. and the U.K., it was also noted that they could become "a foundation for appropriate legal protections". This suggests that over time these constraints, if agreed upon, could graduate from a voluntary to a more mandatory status.

In surveying the present menu for outer space security diplomacy, these three forms of proposals: a legal ban on space weapons, a politically-binding code of responsible behaviour and some type of security-specific CBM, appear to represent the principal options for multilateral diplomatic action in the near term. The position of the U.S. as the principal space-faring nation may be decisive in determining which, if any, of the above channels will be activated. In the wake of the National Space Policy, the Administration has signalled its predisposition in favour of TCBMs versus treaty- based arms control. An endorsement of the EU Code of Conduct would be welcomed by some as a sign of U.S re-engagement in

favour of multilateral cooperation on space security, even if it would eschew a more robust leadership role for America. Although such a modest step would disappoint those supporting a more substantial multilateral space security agreement, Washington may believe that the pursuit of bilateral TCBMs with Russia and if possible with China will allay the principal concerns of these two key space powers. Whatever step Washington takes, it will be pushing on an open door internationally, in espousing some concrete measure for global cooperation on outer space security. The international community wants to see some tangible action on PAROS before this increasingly important environment for global security and prosperity becomes compromised through the introduction of weapons and/or the initiation of armed conflict in that realm.