

## **The Diplomatic Context for Outer Space Security: A One Act Play?**

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In reviewing the current diplomatic scene for outer space security, one has a sense of having had arrived at a theatre during the intermission. One picks up some animated conversation amongst the theatre-goers regarding what has transpired during the first act. The program you received provides some pithy information on earlier productions and on the key actors, but you really have no idea where the next act will take the audience. You remain in suspense awaiting the rise of the curtain, wondering if the production to follow will hold your attention and be worth the price of admission.

To some fans of multilateral outer space diplomacy, the intermission has lasted since 1995 and the termination of the Conference on Disarmament's Ad Hoc Committee on the Prevention of an Arms Race in Outer Space (PAROS). This committee was a subsidiary body created in 1985 by the CD to consider its PAROS agenda item and which had been active over the ensuing decade. Others will point to more recent contributions which have held centre stage for a time, such as the official tabling in 2008 of a Russian-Chinese draft treaty on the Prevention of Placement of Weapons in Outer space (PPWT), the Canadian proposals for three security "pledges" including refraining from attacks on satellites and the weaponization of outer space submitted to the CD in 2009 and finally the presentation of the draft EU Code of Conduct on Outer Space Activities provided to the CD in 2009 and 2010. Real *aficionados* of space theatre will also point to the informal discussion of the PAROS item undertaken by the CD under a succession of coordinators that occurred for a few days during annual sessions from 2007 on. The harsh reality however, as I hardly need to remind this audience, is that the CD's protracted paralysis and associated inability to adopt a program of work has precluded official action on any PAROS-related subject matter as it has on the rest of the Conference's formal agenda.

Just because this particular theatre is effectively dark, does not prevent other venues in New York and Vienna from competing for the productions that might have been expected to be staged here in better times. It also doesn't prevent the onward march of events. It is a woeful delusion on the part of any institution's membership to believe that just because they have come to a halt, so has the world. The public's complacency about the benign outer space environment it had come to rely on, was shaken up recently by events external to multilateral forums. The demonstration of an ASAT capability by China and the U.S. in 2007 and 2008 respectively as well as the accidental collision between a defunct Russian and an active U.S. satellite in 2009, introduced a new sense of urgency for the international community to take some steps to reinforce the existing outer space security regime. It is not a coincidence that the diplomatic initiatives enumerated above all came forward during or subsequent to these developments in the real world. They also provided impetus to efforts centred at other multilateral forums beyond the moribund CD to undertake some specific action on the long-neglected outer space security file.

At the UN General Assembly, in addition to the strong consensus on the need for additional measures to reinforce the Outer Space Treaty –based regime contained in the annual PAROS resolution, new steps were taken with respect to transparency and confidence building measures and their potential role in

strengthening outer space security. The almost universal support shown for the Russian-authored resolution on TCBMs led to the decision to establish a UN Group of Governmental Experts to consider the whole subject. As we know this GGE will get underway later this year and make its report prior to next year's General Assembly. Although dependent on its 15 members arriving at consensus recommendations, the GGE represents a promising vehicle for the UN to begin to articulate measures of transparency and confidence-building that could help safeguard outer space and prevent its weaponization. Certainly it would seem time for some action under UN auspices to respond to the repeated calls by the General Assembly for further measures to reinforce the outer space regime and enhance its effectiveness.

A parallel and arguably complementary exercise has been the EU Code of Conduct on Outer Space Activities, a proposal first put forward in 2008 and then again with a revised draft in 2010. The EU has presented the draft as a basis for consultations with concerned third parties and it has been pursuing these consultations with an unspecified grouping of countries ever since. The EU decided to keep its draft code out of the icy hands of the CD and wants it taken up by a separate diplomatic conference. The producers seem to be having some difficulty in mounting this production. The theatre company is under new management and a direct marketing campaign by 'Euro Code' productions has failed in getting the target audience to subscribe to the whole season. We understand that a focus group will be organized in Brussels in June and that a third version of the screenplay will be circulated beforehand

Not surprisingly, the role of the U.S. as the world's leading space faring power is germane to this discussion. This role, if I can indulge in another theatrical metaphor, resembles that of a mercurial *diva* of the stage; at times appearing to be a good team player and retiring to the wings to allow more junior members of the company to have the lime light; and on other occasions rushing back to elbow these players aside and firmly claim stage centre for herself. It is not an especially edifying spectacle for the audience to behold, but there tend to be sympathetic murmurings in the front rows recalling the stress she has currently been under.

The position of the Obama Administration on issues of outer space security has been expressed through its National Space Policy released in June 2010 and its subsequent National Security Space Strategy issued in February 2011. Both policy documents are laconic when it comes to diplomatic measures to foster the shared stewardship and responsible behaviour by states in outer space espoused in the statements. TCBMs are embraced by the NSP and it declares that the U.S. will pursue them both bilaterally and multilaterally, but no specific measures are endorsed or even mentioned. In subsequent commentary by administration officials the only concrete TCBM referred to was the EU Code of Conduct to which the administration was giving positive consideration, but had not yet made up its mind to endorse. This consideration by the administration was stretching out from months to years and the EU seemed no nearer to getting the U.S. on board. There were suggestions that the U.S. could agree with the Code, but preferred to "lead from behind" and have the EU do the running with selling the concept abroad. Unfortunately, the EU did not seem to be having a great success of this and reports emerged that several states consulted by the EU (India, China, Brazil amongst others) were not keen on aspects of the Code and in particular had some difficulty with its "Product of the EU" tag.

If this external opposition to the Code was a matter of concern for the American administration it was even more disconcerted by some domestic political opposition. A group of Republican legislators, led by Senator John Kyl of Arizona had already publicly protested in early 2011 the EU Code and the Administration's approach to it, suggesting that not only could it weaken national security but the Executive Branch was doing an end-run on Congress in the process. The protracted courting scene between Brussels and Washington over the proposed Code – “will she, or won't she” was finally interrupted by an abrupt role reversal. On January 17 of this year, the U.S. Secretary of State announced that “the United States has decided to join with the European Union and other nations to develop an International code of conduct for outer space activities.” The wooed had suddenly become the wooer – it was now no longer the EU Code and obtaining U.S. support for it, but rather a U.S.-led exercise to develop a code in conjunction with the EU and others. The Secretary's intervention in the love scene was likely prompted by the fumbling of her lines on the part of a supporting actor, subsequently dropped from the company, who had stated that the U.S. had rejected the EU Code from the start. If this leaves the future of the Code idea rather confused it is unlikely that we can expect much more clarity this year. For 2012 as we all know has particular significance for the American audience. They tend to lose interest in the more refined pursuits of the multilateral diplomatic theatre and are drawn to the earthier spectacles offered by the blood-sports, such as presidential and congressional elections.

These internal political concerns have their implications for foreign policy and by extension the diplomatic context in which space security matters will be played out. Some of these domestic political concerns were already manifested in Secretary Clinton's brief statement regarding the Code. A defensive note was struck with the Secretary asserting, “that we will not enter into a code of conduct that in any way constrains our national security-related activities in space...” A casual spectator might be forgiven in asking then: what is the value of embarking upon an international code or any other multilateral arrangement, since any significant international security accord involves some degree of (mutual) constraint on the activities of the parties to the agreement. If national security-related activities of space powers are to be unaffected by a future code, what is its utility for strengthening the outer space security regime? Presumably this apparent paradox will be clarified when and if a code text is put forward for consideration by states. The ambiguity of the U.S. statement does not permit one to conclude that the envisaged International code is to be based on the EU draft or on some other text to be introduced into the process. It is also uncertain if the EU concept of a consultative period featuring some expert meetings to be followed by the convening of an ad hoc diplomatic conference to adopt the Code is still to be followed or whether some new diplomatic process is to be launched.

The plot thickens on this diplomatic drama and given the American electoral calendar us theatregoers will have to expect that the current intermission in multilateral space diplomacy will last through the rest of the year. Let us hope that the finale of this multilateral space security production is worth the wait. For those players not enamoured with the Code, this “entre-act” period might also afford an opportunity to present other proposals or revive previous ones as to what the next act of space diplomacy should consist of. For fans of the Code it would be a help, if at least prior to the curtain rising next season on their new more inclusive show number, the EU, the U.S. and the unspecified other

nations could agree on who gets what billing on the theatre's marquee. Given that the production is about outer space security, we certainly have enough stars to go around and the public of the international community is anxious to see some form of cooperative production get staged soon.

Thank you.

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