

## **“Putting Cooperation back into Space Security”**

**Presentation by Paul Meyer to the 10<sup>th</sup> UN Workshop on Space Law, Contribution of Space Law and Policy to Space Governance and Space Security in the 21<sup>st</sup> Century, September 5, 2016, Vienna, Austria**

When we consider the contribution of space law and policy to the condition of space governance and security, I am reminded of the utility of the concept of the “frame”. In the realm of social science, the frame is the manner or context in which a given issue or problem is presented. This conceptual framing can frequently have a great impact on our perception of that issue or problem and the nature of the solutions generated to respond to it.

With respect to the subject of outer space, a successful example of a framing device was contained in the US Government’s *National Space Security Strategy* of 2011. Most in this room will recall that this document famously described outer space as “congested, competitive and contested”. This depiction elicits an uncomfortable feeling in the reader, who may associate it with unpleasant experiences of being jostled in a crowd, squashed in the corner of an overloaded elevator or even elbowed aside in an unruly buffet line at a relative’s wedding. While the knowledgeable may be amused by the suggestion of a lack of space in outer space, for many the metaphor may suggest a hostile environment in which ones interests are being challenged and must be actively defended.

Knowing the fondness of Department of Defense staff writers for alliteration, I was surprised, by the absence of another “c” word in that policy document’s characterization of outer space. That word is “cooperation” and I believe it is crucial for the future of space governance and space security that we do not overlook its role, past and present.

International cooperation as a means of conflict prevention has been at the core of the United Nations since its inception. Cooperation and restraint have also been the central tenets of the 1967 Outer Space Treaty a foundational agreement that has enduring value for all users of outer space. I fear that with the passage of time since its conclusion and as a result of the treaty’s institutional deficit that provides for no regular meetings of its state parties, that space actors have lost a true appreciation of its significance.

Let’s recall the special status of outer space as “a province of all mankind” which is “not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”. Given how clashing sovereign claims and territorial disputes have so often fueled terrestrial conflict, this ‘global commons’ status for outer space is already a remarkable conflict prevention measure.

Moreover the use of this realm “shall be carried out for the benefit and in the interests of all countries”. Cooperation here is not merely a desirable but an obligation of all parties. The treaty explicitly states that activities in space shall be

“in the interest of maintaining international peace and security and promoting international co-operation and understanding”.

These obligations to uphold peace and security are reinforced by the treaty’s prohibition on weapons of mass destruction as well as its ban on any form of militarization on the moon and other celestial bodies. The “for peaceful purposes” rationale of the treaty is evident throughout and this has allowed the development of a largely benign operating environment in outer space, free from manmade threats, that has served the interests of all of humanity. It is incumbent on us all as beneficiaries of the special regime established by the Outer Space Treaty to reaffirm its provisions and the ethos of international collaboration and cooperative security that it embodies. As a diplomatic product it represented “the better angels of our nature” and should be revered and celebrated by the outer space community. Personally, I am very disappointed in the lack of respect of the treaty shown by its states parties as represented by the shabby, neglect being accorded to the treaty’s 50<sup>th</sup> anniversary next year.

The regime created by the Outer Space Treaty requires positive acts of observance if it is to remain vital and healthy. As the annual “Prevention of an Arms Race in Outer Space” resolution adopted at the General Assembly with wide support, reminds us with respect to the legal regime for outer space “that there is a need to consolidate and reinforce that regime and enhance its effectiveness”. We can’t rest on our past laurels – we need to keep pedaling that bicycle forward.

There have been some positive developments recently in the realm of space security diplomacy. Noteworthy was the consensus report of the UN Group of Governmental Experts (GGE) on “Transparency and Confidence-building Measures in Outer Space Activities” of July 2013 (A/68/189).

The report articulated the helpful role TCBMs could play in promoting international cooperation and security, enumerated their chief categories and set out criteria for these measures. The report presented a rich menu of potential TCBMs and encouraged states to consider adopting such measures on a voluntary basis.

Similarly, the agreement by COPUOUS earlier this summer on an initial set of guidelines for the long term sustainability of outer space contributed to international cooperation and provided some encouragement to resolve remaining differences over the other proposed guidelines.

These accomplishments were especially timely in that they demonstrated a cooperative path forward for states on outer space affairs against a background of revived fears over the re-emergence of anti-satellite weapon testing by major spacefaring states a few years earlier.

Recommendations and guidelines however are not self-executing. It remains to be seen whether the GGE’s success in generating a well-crafted set of TCBMs will result

in the implementation of such measures anytime soon. Regrettably the impetus for cooperative security measures in space has met countervailing forces that have diluted its influence on the space policies of states. In my view, four developments in the post-2013 period have militated against wider adoption of the GGE recommendations: i) an impasse over legally-binding constraints such as the Prevention of the Placement of Weapons in Space Treaty (PPWT); ii) the breakdown of consensus on space-related resolutions at UNGA; iii) escalating threat perceptions regarding counterforce capabilities and iv) the failure to realize an International Code of Conduct as had been promoted by the EU. I will consider each of these factors in turn while recognizing that there are clear interrelationships amongst them.

### *PPWT Impasse*

The protracted impasse with respect to consideration of the Sino-Russian proposed treaty on the “Prohibition of Placement of Weapons in Space” has constituted a blockage in space security diplomacy that has generated negative consequences. The PPWT was originally tabled at the Conference on Disarmament (CD) in 2008 with a revised version being submitted in June 2014. Its sponsors have repeatedly said that they would welcome discussion of the draft, but given the lack of an agreed program of work at the CD, there has been no authorized subsidiary body at the CD to take up this proposal. China and Russia however have to date not been willing to take the draft treaty outside the CD for consideration.

To some extent the deadlock over the PPWT has been a proxy battle with respect to the acceptability of legally binding arms control accords for outer space. The US, while theoretically open to new legal instruments, in practice only seems willing to support politically-binding measures. China and Russia in proposing the PPWT reflect their longstanding preference for legally binding instruments when addressing international security issues. The sharply opposing views on the contents of the PPWT and the absence of any working body for engaging the protagonists in an effort to reconcile these views is an impediment to progress on space security and the elaboration of new multilateral agreements whatever their status.

### *Breakdown of Consensus*

A positive feature of the international community’s declaratory policy on outer space security, as evidenced by relevant resolutions at the UN General Assembly, has been the high degree of consensus regarding them. The annual resolution on the “Prevention of an Arms Race in Outer Space” for example has had no opposing votes in recent years and only two abstentions. The resolution on TCBMs was adopted last UNGA session without a vote being required. At the 69<sup>th</sup> session of UNGA in 2014 however this pattern of consensual policy expression was broken with the introduction by Russia of a new resolution on the “No First Placement of Weapons in Outer Space”. This resolution (69/32) encouraged states to adopt a political

commitment not to be the first to place weapons in outer space. There was significant resistance to this resolution with some arguing that it did not meet the criteria for TCBMs that had just been arrived at by the GGE. Others thought the “no first placement” phraseology as opposed to a simple “no placement” pledge period to be problematic.

Despite these misgivings the resolution sponsors did not offer up any modification to the text and pressed on to a vote with the predictably divisive results of 126-4-46. At last year’s session the same resolution (70/27) was again adopted with a sizeable minority of states not supporting it. Regrettably this has introduced a discordant element into the prevailing consensual approach that had characterized UNGA’s pronouncements on space security.

### *Escalating Threat Perceptions*

A troubling theme in recent years has been the escalation of threat perceptions and allegations of weapon development programs aimed at deploying counterspace systems. Indicative of this trend was the U.S. Director of National Intelligence’s recent global threat assessment, which stated “Russia and China continue to pursue weapons systems capable of destroying satellites on orbit, placing US satellites at greater risk”. What ever the reality of such programs and this is clearly an area of military activity which would benefit from greater transparency, the ratcheting up of threat-rhetoric works to exacerbate incipient arms racing and detract from diplomatic efforts to foster international space cooperation.

### *Failure of International Code of Conduct Proposal*

Friends of outer space diplomacy had high hopes regarding the EU-initiated proposal for an International Code of Conduct (ICoC) to cover outer space activities. The proposal, first tabled in 2008, has undergone a long if uneven process of consultation and textual refinement. The tempo and extent of consultations increased in the 2013-2014 timeframe and led the EU sponsors to decide that the project was ready to move into a final round of multilateral negotiations to finalize the text. The meeting the EU convened in New York, in July 2015 failed to produce the desired outcome. Significant opposition regarding the basic process came especially from the BRICS grouping of states which issued a joint statement stipulating that “the elaboration of such an instrument should be held in the format of inclusive and consensus-based multilateral negotiations within the framework of the UN”

The EU voiced its regret that negotiations to finalize the text of the ICoC had proven impossible, but did not seek a new UN-mandate for an open-ended negotiation process at last fall’s UN General Assembly nor has it indicated a desire to do so at this fall’s UNGA. At present the ICoC initiative is in a kind of diplomatic limbo with no official champion committed to taking the proposal forward.

### *What to do?*

I don't want to end my address on a downbeat note, but realism dictates that all stakeholders in the secure use of outer space recognize the negative trends of recent years and formulate strategies accordingly. Remedial action to promote cooperative security approaches in outer space is needed and from all constituencies of the space community. In my opinion, there are four near term steps that can be taken to help restore a more constructive atmosphere.

1. China and Russia should seek another forum to initiate discussion of their proposed PPWT and legally-binding arms control in space generally. This could be either an existing or an ad hoc mechanism, but it would transcend the stalemate at the CD and permit discussion of the important factors of definitions, scope and verification that have not had an adequate airing in a multilateral context.
2. All states should practice strategic restraint in their military space programs, offer greater transparency as to their nature and mute the threat rhetoric.
3. A representative group of states should initiate a process at this fall's UNGA to establish an open-ended working group to elaborate an International Code of Conduct on outer space activities. This initiative has too much useful potential to be simply set aside.
4. A deliberate effort is pursued to re-establish common ground concerning the regime governing outer space. One step of both symbolic and substantive importance, would be to seize the opportunity presented by the Outer Space Treaty's 50<sup>th</sup> anniversary in October 2017 to convene the first ever meeting of its states parties.  
Such a public celebration of this cornerstone treaty could help consolidate support for its key principles and obligations as well as prompt new cooperative steps for the future. A suitable gathering of states parties could also provide an incentive for further universalization of the treaty as countries outside the treaty will want to attend the party.

These, ladies and gentlemen, are my suggestions as to how to restore positive momentum to space security diplomacy and help put cooperation at its centre again. Thank you for your attention.