“Diplomatic Options for Outer Space Security”

Paul Meyer – Presentation for UNGA First Committee, New York, October 13, 2011

It is good to return briefly to this locale in the bowels of the UN to speak to a subject which deserves more attention. The Space Security 2011 publication provides an excellent overview of the developments taking place that are relevant to outer space security. Its description of the ever increasing number of participants in outer space and the wide array of services which are provided via space-based assets, reminds us of the heavy dependence all humanity now has on the continued peaceful use of outer space. If this benign environment was ever to become a battleground for destructive military operations, the disruption of global space activity would be immense. Even the mere threat of this occurring would have detrimental consequences for international security and prosperity.

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. Yes there have been some useful principles on aspects of outer space action and voluntary guidelines developed, but the basic framework for outer space security has remained essentially unchanged in over forty years.

This stasis in the development of the framework for outer space security was not however a reflection of satisfaction with the status quo. Indeed with almost universal agreement UN member states have 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 has been set out regularly since the early 1980s in the UN General Assembly’s First Committee 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 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) incorporates a few key conclusions:

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.

If the policy direction is clear the implementation of that direction has been anything but. The appeal to the CD to re-establish a subsidiary body on PAROS has gone unanswered as that forum is paralysed by its inability to agree on a program of work. More recently, concerned countries have looked to other potential avenues to give effect to the broad policy direction of the PAROS resolution. In recent years, Russia has led an initiative to elicit concrete proposals on Transparency and Confidence Building Measures (TCBMs). Under this near universally supported resolution various TCBM proposals have been submitted and compiled and last 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. Those interested in space security will eagerly await 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 component 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.

Obtaining a solid result from the GGE will depend in part on the position adopted by the leading space-faring power, the United States. Although official U.S. positions on outer space security have evolved in a positive direction they still are not fully aligned with the mainstream of international opinion on outer space security. The Obama Administration's National Space Policy, released in June 2010, adopted a guarded pose on outer space security. On one hand it proclaimed that the United States will pursue TCBMs bilaterally and multilaterally, but on the other it did not elaborate as to the content of the TCBMs it would favour. As for possible arms control, the National Space Policy stated that the United States would be prepared to consider proposals that met certain criteria, but refrained from setting out any proposals of its own. The National Space Policy and subsequent sub-ordinate policy statements indicated that Washington prefers a reactive position at this stage limited to evaluating ideas generated elsewhere. For the last couple of years the one space security proposal that has received prolonged and sympathetic consideration, if not yet outright endorsement, is the EU draft Code of Conduct on Outer Space Activities (more on this later).

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. There have been some official proposals submitted and a few interesting informal 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 renewed 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 allowed to continue. 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 heightened anxiety over 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.

In my view, there are currently three principal options for making progress on outer space security. They are i) a treaty prohibiting space weaponization, ii) a Code of Conduct on responsible space behaviour and iii) a set of CBMs that are designed to preclude threats to space-based assets.

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 as far back as 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. Russia in particular 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. 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. Given that no solution seems in sight for overcoming the paralysis in the CD, the PPWT sponsors are going to face sooner or later the question of abandoning the CD as the designated forum for action on the PPWT, or abandoning the treaty itself. 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. This plus provisions for biennial meetings, a central point of contact, and common database suggest a promising institutional dimension of the Code that potentially could be as, if not more, important as the actual contents. 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 might be willing to settle for agreement on TCBMs as an initial step towards achieving a more collaborative outer space security regime.

While the utility of CBMs in the outer space realm is universally recognised, few states have actually advanced specific CBM proposals. Canada has been one of the handful which have contributed to the outer space security debate by submitting working papers to the CD in 2007 and 2009. In the earlier paper, Canada proposed that: i) states make better use of the CBMs contained in existing accords such as the Outer Space Treaty and the Hague Code of Conduct; ii) a moratorium on ASAT tests be agreed and iii) multilateral space situational awareness be conducted through a monitoring centre along the lines of the earlier French proposal for UNITRACE. In the 2009 paper Canada suggested 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 the 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 and implemented satisfactorily, could graduate from a voluntary to a more mandatory status.

To recapitulate, the present menu for outer space security diplomacy essentially has three forms of proposals: a legal ban on space weapons, a politically-binding code of responsible behaviour and some type of security-specific CBM. Although the GGE on TCBMs may contribute some new variants, its outcome is two years off and still uncertain. In my view, the three existing proposals represent the principal options for multilateral diplomatic action in the near term. Of these the EU Code, with its modest initial requirements and easy accession character, may represent the “low hanging fruit” for outer space diplomacy. Whichever proposal for global cooperation on outer space security can command adequate support by states will be pushing on an open door. After all these years, the international community is longing 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.