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The Judgment of PAROS: How Best to Prevent an Arms Race in Outer Space

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The Judgment of PAROS: How Best to Prevent an Arms Race in Outer Space

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Abstract:

The international community will soon need to judge as to what measures should be agreed to prevent an arms race in outer space. The world depends increasingly on services provided by space-based assets and recent anti-satellite weapon tests have raised the prospect of space becoming a weaponized conflict zone. Several diplomatic proposals have been made by Russia, China, Canada and the EU aimed at reinforcing the present regime for outer space security. The leading space power, the United States, has for several years remained on the sidelines, neither endorsing any of the existing proposals nor advancing ideas of its own. Domestic political considerations appear to be hampering the Obama Administration's capacity to engage actively in the current outer space diplomacy. Early in 2012 however, it declared support for an International Code of Conduct on Outer Space Activities based on an earlier EU draft. Such a draft, despite its modest security content, offers a promising array of mechanisms for international cooperation on outer space security at a time when the world depends increasingly on the unimpeded operation of some one thousand satellites.

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The Judgment of PAROS: How Best to Prevent an Arms Race in Outer Space

In the classical Greek myth, Paris, a shepherd youth, is obliged to choose the most beautiful amongst three goddesses. It was a daunting task for a mere mortal who seemed well aware that he would risk the displeasure of the two celestial deities not selected in this beauty contest. There are some parallels to Paris's dilemma and that of the international community faced with the question of how best to prevent an arms race in outer space (or PAROS according to the inevitable acronym). Although sometimes viewed as remote a threat strategically as its subject is physically, the relatively benign environment of outer space cannot be taken for granted. Growth in the use of outer space by humanity has been constant since the ushering in of the space age over 50 years ago. Today it is estimated that there are some 1,000 satellites in operation, owned by over 60 states. No longer is exploitation of outer space the preserve of a small group of advanced industrialized states. A dozen states currently have the capacity to place an object into orbit and an even larger number own and/or operate satellites. Developing countries are increasingly to be found beside developed ones in possessing satellites and practically every country on the globe is a consumer of space-based services in some form or the other.

A wide array of functions, from remote sensing of ecological and weather activity, to communication and navigation services are being performed via space-based assets. Up until now, these assets have not been threatened and have been able to operate freely. Outer space has been treated as a global commons, "the province of all mankind", the use of which shall be for "peaceful purposes" and "carried out for the benefit and in the interests of all countries". These quotations are from the preamble and Article 1 of the 1967 Outer Space Treaty, the most important international treaty governing outer space.¹ Its promotion of peaceful purposes in outer space is reinforced by provisions precluding national appropriation of space (thus avoiding potential conflicts over sovereign claims) and the placement of any weapon of mass destruction in outer space. However the Outer Space Treaty does not specifically exclude non-WMD type

weapons from being deployed in space and its “peaceful purposes” constraint has not prevented extensive military, alongside civilian, use of outer space. States have chosen to consider military use of space as compatible with the purposes of the Outer Space Treaty to the extent that this use has not entailed offensive military action being conducted in or from space. Thus current debate over the adequacy of the Outer Space Treaty as the international legal foundation for regulating outer space behaviour has drawn a distinction between ‘militarization’ of space and its “weaponization”. By the latter term, is meant the actual deployment of space-based weapons which would be utilized to conduct destructive operations against other space-based assets or targets on the ground. While ‘militarization’ has occurred for some time now, ‘weaponization’ has not and many states believe that it should be prevented and thereby remove the risk that outer space, like the more terrestrial environments of land, sea and air, becomes a potential battleground for inter-state warfare.

Such concerns have animated states for some time and the issue of “the prevention of an arms race in outer space” has been on the agenda of the United Nations General Assembly and its associated multilateral negotiating forum, the Conference on Disarmament, since the early 1980s. A resolution on PAROS has been adopted annually by the General Assembly since that period, with the latest version (A66/27) approved in December 2011 by a vote of 176 in favour, none opposed and two abstentions (the US and Israel). The chief elements of the resolution affirm: 1) that through PAROS, the world can avert “a grave danger for international peace and security”; 2) that the current 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”; and 3) the Conference on Disarmament should “establish a working group” under its agenda item on PAROS “as early as possible”. It is noteworthy as well that in the preamble of the resolution the General Assembly declares that “further measures should be examined in the search for effective and verifiable bilateral and multilateral agreements in order to prevent an arms race in outer space, including the weaponization of outer space”.² The declared policy of the vast majority of states therefore is that any arms race or weaponization of outer space should be prevented, that the existing legal regime is inadequate to ensure this and that effective prevention will require further measures. What these measures should consist of is

not specified in the resolution, but there are positive references to both verifiable agreements and confidence-building measures (CBM).

The sustained and almost universal support for the PAROS resolution suggests that states do not believe that a continuation of the current, broadly benign situation in outer space can be taken for granted. Several man-made threats to the peaceful enjoyment of outer space have recently underscored the potential vulnerability of satellites and the risk to international security in general if a state decided to pursue a more belligerent course of action. The threat posed to space craft from the growing amount of space debris orbiting the globe has been receiving greater attention. The accidental collision of a US and a Russian satellite in 2009 on top of several earlier debris clouds generated by accidental explosions of launch vehicles has contributed to increased risk through expanding the quantity of space debris in orbit. For example, by the end of 2009, the total number of large and medium-sized objects greater than 10 cm and tracked by the US Space Surveillance Network was 15,096. This represented a 15% increase over the total at the end of 2008. Given the orbital speed of this debris, which in Low Earth Orbit (LEO) can attain velocities of up to 7.8 km per second, even small debris items contain massive kinetic energy (a 10 cm piece in LEO carries the same kinetic energy as a 35,000 kg truck travelling at a speed of 190 km/hour). Such debris poses a growing risk to space craft especially those operating in LEO. A US National Research Council study of the problem, warned that “growth in the amount of debris threatens to make some valuable orbital regions increasingly inhospitable to space operations over the next few decades”.³

Even more troubling than these debris-producing accidents, were the ASAT (anti-satellite weapon) tests conducted by China in 2007 and the US in 2008 (although presented as an intervention required for public safety, the US action in February 2008 of destroying a de-orbiting satellite demonstrated a ASAT capability irrespective of its true motivation). These tests, particularly the Chinese one which produced a large cloud of enduring debris at a high altitude, revived long-dormant fears that ASAT weapons were being developed and tested and might be harbingers of a new threat of destructive offensive action against space-based assets. These fears had been dormant since the mid-1980s when both the USSR and the US ceased testing earlier ASAT systems they had developed. Although ballistic missile defence systems designed for exo-

atmospheric interceptions have an inherent ASAT-capability, the specific targeting of a satellite with a destructive “kinetic kill vehicle” as carried out in the 2007 and 2008 events broke with a tacit moratorium on such activity which had endured for over two decades. These developments if repeated or replicated by others could erode the nascent norm against space weaponization and open up the prospect of satellites being subject to destructive attack. To try and foreclose this prospect has been the objective of several diplomatic initiatives which can be grouped under the PAROS rubric.

For those states which have sought to give a more operational character to the declaratory policy articulated in the annual PAROS resolutions, there have been basically two avenues of multilateral diplomacy to pursue. The first is the negotiation of a treaty which would preclude or regulate in some manner the use of force against objects in space. The second is the development of political arrangements, often referred to as confidence building measures (CBM) which would aim to promote state behaviour compatible with the goals of PAROS and the non-weaponization of outer space. Both of these variants are also possible through bilateral diplomacy of course, but the ‘global commons’ aspect of outer space makes multilateral approaches all the more pertinent and legitimate. Each of these possible avenues, treaties or CBMs, have their advantages and disadvantages, and not surprisingly the recent discussion of PAROS in multilateral forums has largely been a debate between adherents of either option. Given the consensus basis for much multilateral decision-making, this lack of agreement over which approach would be most effective has hampered efforts to forge new norms for responsible behaviour in outer space. Concerns over the further deterioration of the operating environment in outer space including precedent-setting offensive action in space, are increasing the pressure on concerned states to overcome differences and support some preventative measures. This article will proceed to assess the four chief proposals currently before multilateral forums and suggest a way forward. These proposals are: the draft treaty on Prevention of Placement of Weapons in Outer Space formally presented by Russia and China in 2008 and known by the acronym (PPWT); the Code of Conduct for Outer Space Activity put forward by the European Union initially in 2008 with a revised version circulated in 2010; security-related CBMs such as those presented by Canada in 2009; as well as other measures which have been suggested pursuant to a Russian-led initiative within the UN to solicit ideas for Transparency and Confidence Building Measures (TCBM).

The role of the United States, as the leading space-faring nation, in determining which of the above diplomatic options will likely be taken up, will also be assessed. After years of relative stasis, the diplomacy of outer space security seems poised to advance again and supplement the normative base for responsible state behaviour as currently enshrined in the Outer Space Treaty.

The Russian–Chinese Draft Treaty

The principal treaty proposal before the international community is the Russian-Chinese draft entitled “Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force Against Outer Space Objects” or PPWT. It has had a lengthy gestation period since its initial introduction as a working paper at the Conference on Disarmament (CD) in Geneva in 2002. The current draft was formally presented to the CD in February 2008 by the Russian Foreign Minister, Sergey Lavrov.⁴ In his remarks, Mr Lavrov stressed the fact that any weapon deployment in outer space would “inevitably trigger a chain reaction” and urged the CD to seize the initiative on PAROS as “preventing a threat is always easier than removing it”.⁵ The Chinese Ambassador to the CD conveyed a supporting message from his Foreign Minister, Yang Jiechi, which noted that “preventing the weaponization of outer space...and ensuring the peace and tranquility of outer space are goals consistent with the shared interests of all countries. It is therefore essential that the international community develop new legal instruments to strengthen the existing legal regime on outer space”.⁶

The PPWT is a spare draft with its principal objective set out in Article II, which commits states parties “not to place in orbit around the Earth any objects carrying any kinds of weapons, not to install such weapons on celestial bodies and not to place such weapons in outer space in any other manner; not to resort to the threat or use of force against outer space objects”; thereby extending the Outer Space Treaty’s prohibition on placing WMD in outer space to cover all forms of weapons. Although the treaty contains no verification provision it does suggest verification measures could form the subject of an additional protocol. The draft treaty also acknowledges that agreed confidence-building measures should be implemented on a voluntary basis, but does not specify any CBMs. These two points are somewhat awkwardly contained in Article VI of the draft having been put there apparently in response to earlier comments received

from other delegations. The most extensive critique of the PPWT however was provided by the delegation of the United States, which submitted an official document in August, 2008 detailing a series of shortcomings and ambiguities in the draft treaty.⁷ In particular the US analysis pointed to the lack of any constraints on terrestrial-based anti-satellite weapons, and the limitation of constraints on space-based weapons to their deployment. Referring to certain definitional gaps, the US paper also suggested that the PPWT would not have stopped China's testing of an ASAT weapon against its own satellite as per the 11 January 2007 event, nor prevent an ASAT test against another country's space object as long as this activity avoided physical impact. Although these questions and others would naturally be pursued in follow-up discussion of the PPWT, this has not been possible at the CD. With little prospect of the Conference overcoming its decade long impasse over achieving consensus agreement on a programme of work, there has been no official venue for taking up the PPWT. Although regretting this protracted gridlock in CD, neither Russia nor China has as yet indicated a willingness to remove the PPWT from the ambit of the CD and try to advance it in another forum.

The EU Code of Conduct

In December 2008, the European Union presented its own proposal for reinforcing the outer space regime in the form of a "Code of Conduct for Outer Space Activities". This draft code has been the subject of extensive consultations, both within and beyond the EU and a revised version of the Code was approved by the European Council in October 2010 as a basis for further discussion with third countries.⁸ Prompted by the unsettling ASAT tests of 2007 and 2008 and no doubt influenced by the PPWT and its cool reception by the US, the EU Code sought to pursue the path of least resistance while still aiming to complement the existing legal regime for outer space with a series of CBMs. Modelled to some degree on the existing Hague Code of Conduct for Ballistic Missiles of 2002, the EU Code is a political arrangement which by definition avoids the more binding nature of an international legal agreement. By eschewing a treaty approach, the Code also facilitates adoption as states are not obliged to submit it to ratification processes which can be both time-consuming and politically problematic (a feature designed to appeal to Washington in particular). The Code, as indicated in its preamble, presents itself as "a set of best practices aimed at ensuring security in outer space" and "a useful

complement to international space law”.⁹ The Code in contrast to the PPWT is an expansively written document with a substantial preamble, several general principles and a comprehensive reaffirmation of existing treaties and commitments relating to outer space activity. Many of the measures enumerated in the Code reiterate commitments already undertaken in other instruments, resolutions or arrangements. Despite frequent references to security the contents of the Code are focused essentially on safety aspects of space operations and there is no measure with a purely security character. The area where the Code breaks some new ground and potentially could contribute to strengthening outer space security is in its information-sharing, consultative and organisational provisions. Article 8 specifies an annual exchange of information by the subscribing states on, *inter alia*, “their space policies and strategies, including basic objectives for security and defence related activities in outer space”.¹⁰ Article 9 outlines a consultative mechanism, which is significantly broader than that set out in the Outer Space Treaty and which is to operate under more rigorous parameters: “working jointly and cooperatively in a timeframe sufficiently urgent to mitigate or eliminate the identified risk initially triggering the consultations”. Intriguingly, the Code in Article 9.2 envisages the creation of a mechanism; staffed with international experts, to investigate incidents and provide advisory findings and recommendations (the current text however indicates that this mechanism is “to be determined at a later stage”).¹¹

Under the final section of the Code, entitled “Organisational aspects” there are several more action-oriented steps which could in theory yield significant dividends in terms of enhanced confidence levels concerning outer space. Article 10 provides for a biennial meeting of subscribing states “to define, review and further develop this Code and ensure its effective implementation” Article 11 specifies the nomination of a “central point of contact” which would seem to have the role of a secretariat with responsibility for maintaining an electronic information sharing system and organizing meetings. Finally, Article 12 stipulates the creation of “an electronic database and communications system” the exact nature of which is not clear from the text, but which would serve as a mechanism for channelling consultation requests as well as ensuring the collection and dissemination of notifications and information pursuant to the Code.¹² This collectively represents a degree of institutionalisation not found in the Outer Space Treaty and one that is unusual for non-treaty based arrangements. How such structures and

mechanisms would work in practice is difficult to predict and clearly would be a function of the extent of compliance of the subscribing states with the Code's provisions. The experience of the Hague Code of Conduct is not necessarily promising in that regard as many of its subscribing states failed to follow through with its notification and information sharing provisions. The record on voluntary reporting and submission of information under other international agreements in the arms control and disarmament field (e.g. NPT, BWC) is also not especially encouraging. That said the possibility of more regular exchanges between states on outer space issues and the establishment of consultative processes which could be utilized for preventative diplomacy and problem-solving could help to promote responsible state behaviour and reinforce outer space security norms.

The EU has been extremely cautious in its rolling out of the Code. Earlier suggestions that an ad hoc diplomatic conference would be convened in 2011 to adopt the Code have been supplanted by longer time horizons. The departure last summer of the official, Ms. Annalisa Giannella, heading up the responsible security policy directorate of the EU's European External Action Service has contributed to a slippage in the timetable for organizing a conference to adopt the Code and the current intentions of the EU with respect to its initiative are far from clear.

The EU is understandably anxious to line-up significant international support for the Code before moving ahead to convene a diplomatic conference. It will be crucial to get the US on board for the exercise and although the Obama Administration has been positively considering the Code for over three years, it has only recently come to a decision regarding the Code. That decision came on 17 January 2012 when Secretary of State Hillary Clinton 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".¹³ At present, the exact import of this statement is not clear – is the US partnering with the EU or appropriating the European initiative? It would seem that the Administration, ever sensitive to its domestic political vulnerabilities, has felt obliged, in this election year, to moderate its earlier public expressions of interest in the EU Code. Political opposition to the EU Code had already been expressed in a February 2011 letter from 37 Republican senators headed by Senator Kyl voicing concern over the Code and the fact that the Administration was not bringing it before the

Congress for consideration.¹⁴ It is also evident that other influential space-faring nations such as India, China and Brazil are sceptical about the Code and its “Made in Brussels” label. Part of the delay in the timeframe for obtaining approval of the Code can be attributed to the EU effort to pursue consultations with the states which remain cool towards the initiative. Concerns regarding the Code which can be expected to be raised by other states, include its non-legally binding character, its lack of measures with real security content, its genesis as a EU product rather than an arrangement jointly developed in a broader UN forum and the costs associated with its institutional mechanisms which presumably are to be borne by the subscribing states. It is not yet clear whether, in light of the long-delayed US public response to the Code, the EU will now back away from its initiative and defer to Washington or sustain engagement alongside the US in seeking wider acceptance for the draft Code. Regardless of who is leading a renewed diplomatic effort, differences of view on the substance of a draft Code will continue to represent a challenge for the sponsors.

Canada’s Security-related CBMs

Canada has long been active in outer space security diplomacy and has been one of the few states to have submitted working papers and specific proposals at the CD and the UN. Building upon earlier suggestions for enhancing space security and in light of the absence of security content in the EU’s draft Code, Canada proposed in 2009 the adoption of a series of pledges by states to refrain from actions which would threaten space security. The three specific pledges were: 1) not to test or use a weapon against any satellite so as to damage or destroy it; 2) not to place any weapon in outer space; and 3) not to use a satellite itself as a weapon. An additional advantage to this approach, according to the Canadian submission, was that it would eliminate the need to define the term “weapon” (the lack of such a definition was one of the problems identified with the PPWT), “since the effects of the weapon are included within the proposed prohibitions”.¹⁵ While possessing the same convenience of the EU Code’s political arrangements over legally-binding ones, the Canadian suggestions addressed the core security concerns regarding the weaponization of space that had prompted the PPWT and in that sense were conceived as representing a middle course between the two other options. These ideas have

not been promoted actively by the Canadian government subsequently however and have not received much pick-up by other space powers although some NGOs have advocated similar steps.¹⁶

Russia's Transparency and Confidence Building Measures (TCBM) Initiative

The other main source of proposals relating to outer space security has emerged from a Russian-led initiative to solicit ideas for TCBMs. Since 2005, Russia has led on a resolution in the UN General Assembly calling for the submission of concrete proposals for outer space TCBMs. This resolution (the latest substantive version A/RES/65/68 was adopted by the General Assembly 8 December 2011) has received wide support (only the US failed to approve it last year) and has yielded several compilations of submissions by states.¹⁷ While only some two dozen states have made submissions and few of these have presented concrete proposals there has been general endorsement of TCBMs as a means of reinforcing the outer space regime. Russia, as the author of the resolution, has generated the most proposed TCBMs including most recently a proposal for the "exchange of information on foreseeable dangerous situations in outer space". Suggestions from other states have included pre-launch notifications, invitation of observers to space launches, information exchanges on outer space policy and programs and the creation of mechanism to verify outer space activities. Certain states (e.g. China and Cuba) have made the point in their submissions that TCBMs are no substitute for arms control and disarmament measures contained in legally binding international instruments.

More significant than the national submissions generated to date, the latest resolution also authorised the establishment of a UN Group of Governmental Experts (GGE) to conduct a study starting in 2012 on outer space TCBMs and to report back to the General Assembly in 2013. The convening of a GGE has frequently been a precursor in the UN system to the adoption of more developed arrangements or instruments at a later stage. As GGEs work on the basis of consensus, the possibility of having a substantive report and recommendations will be a function of achieving agreement from amongst all the members of the GGE (usually some 12 to 15 individuals ostensibly operating in their personal capacity but normally reflecting national positions). At a minimum the activation of a GGE on the subject of outer space TCBMs will

draw attention to the subject matter, even though there is no guarantee that it will be able to produce agreed and significant recommendations for action.

The US on the Sidelines

The US is conspicuous by its absence in this survey of the principal international proposals for reinforcing the outer space security regime. As the leading space power and a chief architect of much of the existing multilateral framework for international security, it would have been expected for the US to be suggesting some measures of its own. Policy development on outer space security has not been forthcoming from the US national security establishment in recent years. There has been a lengthy transition from the Bush Administration and its belief that the existing legal order in outer space was adequate and that arms control had no place in outer space, to the new policy stance of the Obama Administration. That policy itself has been a long time in coming and its contents have not supplied the innovation or grand direction that the international community might have expected. The National Space Policy (NSP) released by the Obama Administration in June 2010 was a spare document and quite laconic when it came to describing what measures the US wanted to see in outer space. The NSP stated that the US will pursue TCBMs but provides no guidance as to what the nature of these measures should be. The NSP is even less forthcoming when it comes to possible arms control measures, noting that it would “consider proposals and concepts for arms control measures if they are equitable, effectively verifiable and enhance the national security of the US and its allies”.¹⁸ The NSP seems to be putting the onus on others to come up with the proposals which would meet its high bar and makes no contribution of its own to outer space arms control, suggesting continuity with the Bush Administration’s aversion to such action.

The NSP was followed in February 2011 by a National Security Space Strategy (NSSS) released jointly by the Secretary of Defense and the Director of National Intelligence. This Strategy did not shed much more light on the outer space security diplomacy the US would pursue. While it did call for “a stable space environment in which nations exercise shared responsibility to act as stewards of the space domain and follow norms of behaviour”,¹⁹ it provided scant guidance on how the US intended to bring this about. Significantly, while the

NSSS describes space as *congested*, *contested* and *competitive*, it fails to depict it as also an environment for *cooperative* action. Besides endorsing the notion of responsible behaviour by states in outer space, the NSSS like the NSP before it, lacks a diplomatic game plan for realising this desired state of affairs. At the press conference launching the NSSS, Deputy Secretary of Defense Lynn avoided a question from a journalist as to whether the US was developing arms control proposals of its own. Later in the same conference, Deputy Assistant Secretary of Defense for Space Policy, Greg Schulte, explained that “the focus of the administration really is on promoting what we like to call transparency and confidence-building measures, which tend to be voluntary as opposed to legally-binding”.²⁰ The only such TCBM which appeared to command any attention on the part of the Administration is the aforementioned EU Code of Conduct. At the February 2011 NSSS press conference and elsewhere, Administration officials have made positive noises about the EU Code and have said it was under study. This protracted “examination” of the EU Code and associated failure to publicly pronounce on it has been ascribed to reluctance on the part of the US to sign up to the Code before it has garnered greater acceptance worldwide. Another explanation is that the “not invented here” character of the EU Code made the Administration leery of endorsing it, until such time as it was able to re-package the idea as an American initiative.

The Administration’s drawn-out tease over whether to embrace the EU Code is also conditioned by its anxiety over rousing opposition from domestic political foes as evidenced in the salvo represented by the letter of concern from Senator Kyl and 36 other Republican senators. This concern that an Administration endorsement of the EU Code could prove to be an electoral liability may help explain the assertion in the Secretary of State’s press release expressing support for an international Code, “that we will not enter into a code of conduct that in any way constrains our national security-related activities in space”.²¹ Given that all significant international security accords involve some degree of (mutual) constraint, this declaration does not augur well for devising a meaningful Code of Conduct. The protracted ambivalence over the EU Code coupled with the absence of alternative “Made in the USA” proposals until the ambiguous announcement in January 2012 of US intention to develop an International Code suggests that US outer space security policy will remain on hold over the next months and probably until after the elections.

The political sensitivity of this subject was manifested again when the day after Secretary Clinton's announcement, Senators Kyl and Sessions and Congressmen Turner and Heck sent a letter to the President expressing concern that Congressional prerogatives were being ignored if the Administration pursued negotiation of a measure similar to the EU Code of Conduct. According to its authors, any eventual Code would engage regulations which would have implications for national security and interstate commerce in a way requiring Congressional involvement. In the opinion of one commentator, "Congress has drawn a legal line in the sand, and the Administration must choose whether to stop short of that line and include Congress in the process of negotiating the Code or step over it and risk the wrath of Congress's asserted commerce power."²² In a possible effort to fend off such an eventual challenge while not conceding Executive Branch prerogatives, the State Department in a release accompanying the Secretary's announcement stated: "The Administration is committed to keeping the US Congress informed as our consultations with the space faring community progress".²³

In addition to being sensitive to potential political opposition, the Administration's tepid involvement on the outer space security file to date suggests divided counsel as to the priority to be accorded this aspect of its international security policy. On the one hand, senior Administration officials are making the case for some enhanced international cooperation to sustain a benign space environment. In a recent article, Deputy Secretary of Defense Lynn has stressed the dependency of the US on space systems for successful war fighting and warned that "without them many of our most important military advantages evaporate".²⁴ On the other hand, the Administration seems unable to extrapolate from this appreciation of the existing outer space environment, a substantive diplomatic strategy for securing and strengthening it. When Deputy Secretary Lynn addresses the diplomatic dimension in his article, there is only a reiteration of the passive mode of considering other states' ideas: "we are assessing diplomatic initiatives such as the EU Code of Conduct to promote international norms of responsible behaviour".²⁵ The Secretary of State's ambivalent statement on the Code (is it a dismissal of the EU proposal or its appropriation?) does not really help the Administration to get off the picket fence of outer space security policy. Declaring support in the abstract for an international Code of Conduct without promoting a specific proposal does little to advance the multilateral consideration of potential measures to reinforce outer space security. In the absence of a specific diplomatic initiative, on

substance or process, the US will probably be unable to ensure the enhanced cooperation and shared responsible state behaviour it is espousing in its declaratory policy.

To Whom the Golden Apple?

The present stasis in the global outer space security regime is unlikely to last too much longer. External developments have revived the spectre of the weaponization of space at the same time as several diplomatic processes have matured. Of the diplomatic options surveyed above, the one that seems ripest for fulfillment is the EU Code of Conduct on Outer Space Activities. This is a modest, but potentially important contribution to revitalizing international awareness of, and engagement in, preserving a space environment which permits sustained and secure access for all. The Code also has the advantage of a low transactional threshold, being a politically binding arrangement rather than a treaty that avoids the need for domestic ratification with its attendant delays and political challenges. The EU's own lethargic promotion of the Code over the last few years may however have dimmed its prospects for adoption. The implication that Washington may now want to assume leadership of a renewed effort to develop an International Code could effectively side-line the EU's initiative. Alternatively, the EU may gladly concede paternity for a Code if it means that the US will seriously engage in promoting one, including using its influence on sceptics and those states which have been cool to the EU effort.

For most states with an interest in outer space security having some initial stabilizing steps agreed to will be welcomed. The Code's relative advantage over its rivals in this regard lies more in their flaws than its strengths. The Russian–Chinese PPWT faces strong opposition from some quarters and is a victim of the general paralysis of the CD where its sponsors have chosen to consign it. Canada has failed to promote its proposed security pledges and there has been little pick up of these ideas by other states which either favour a non-weaponization treaty or a less-demanding set of CBMs. Russia has successfully built support for its general study of TCBMs in the UN context, but cannot expect to displace the EU's Code in the near term, given the fact that the recommendations of the UN GGE will not appear until 2013, and then only if a consensus agreement can be reached by its diverse membership.

In substance, the Code is far from a panacea for the current strategic vulnerabilities faced by the outer space environment. However, its promulgation, if sufficiently supported, would represent a significant step forward in strengthening the outer space security regime. In particular, it would reinforce the norm of non-interference with the assets and operations of states in outer space. The Code's institutional mechanisms could also, if implemented, create a pattern of cooperation and consultation which would be beneficial for sustaining a benign space environment. These political and indirect benefits of a widely subscribed to Code of Conduct may provide, in the near term, the best way of preventing an arms race in outer space and justify Paris choosing the goddess of the Code for his golden globe award.

Notes

¹ "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space" Opened for signature 27 January 1967, available at <http://disarmament.un.org>.

² See UN General Assembly resolution "Prevention of an Arms Race in Outer Space" A/RES/65/44, 13 January 2011.

³ See "Space Security Index 2010" pp 29-33 for debris statistics, August 2010, available at www.spacesecurity.org.

⁴ "Treaty on Prevention of the Placement of Weapons in Outer Space and of the threat or use of force against Outer Space objects (PPWT), CD/1839, 29 February 2008.

⁵ CD/PV.1089, 12 February 2008, p. 5.

⁶ CD/PV.1089, 12 February 2008, p. 8.

⁷ See CD/1847, 26 August 2008 for text of US paper.

⁸ "Council Conclusions concerning the revised draft Code of Conduct for Outer Space Activities" Council of the European Union, 14455/10, Brussels, 11 October 2010 (subsequently referenced as "Code of Conduct").

⁹ "Code of Conduct" p. 3.

¹⁰ "Code of Conduct" p. 10.

¹¹ "Code of Conduct" p. 11.

¹² "Code of Conduct" Organisational aspects, pp. 11–12.

¹³ "International Code of Conduct for Outer Space Activities", Department of State Press Release, 17 January 2012.

¹⁴ See Colin Clark, "Senators Warn Clinton on Space Code" *DOD Buzz*, 4 February 2011; available at www.dodbuzz.com.

¹⁵ "On the Merits of Certain Draft Transparency and Confidence-Building Measures and Treaty Proposals for Space Security" Working Paper submitted by Canada, CD/1865, 5 June 2009.

¹⁶ See Laura Grego and David Wright, "Securing the Skies: Ten Steps the United States Should Take to Improve the Security and Sustainability of Space" Union of Concerned Scientists, November 2010, pp 18–20.

¹⁷ See UNGA Resolution "Transparency and confidence-building measures in outer space activities", A/RES/65/68, 13 January 2011 and compilation A/65/123, 13 July 2010.

¹⁸ “National Space Policy of the United States of America”, the White House, 28 June 2010, p. 7.

¹⁹ “National Security Space Strategy” US Department of Defense, February 2011, p. 4.

²⁰ See Transcript of DOD News briefing with Deputy Secretary Lynn and Deputy Assistant Secretary Schulte, 4 February 2011, p. 5, available at www.defense.gov/Transcripts.

²¹ See “International Code of Conduct for Outer Space Activities” op cit.

²² Michael Listner “Congress Draws a Legal Line in the Sand over the Code of Conduct” *Space Policy Examiner* 9 February 2012.

²³ “An International Code of Conduct for Outer Space Activities” Bureau of Public Affairs, State Department, 17 January 2012.

²⁴ William J. Lynn III, “A Military Strategy for the New Space Environment”, *The Washington Quarterly*, Summer 2011, p. 7.

²⁵ Lynn, p. 11.