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The Diplomacy of Space Security: Whither the International Code of Conduct?

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The Diplomacy of Space Security: Whither the International Code of Conduct?

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Abstract:

The potential for outer space weaponization represented by the testing of anti-satellite weapons by China and the U.S. in 2007 and 2008 respectively has raised long dormant concerns. These may help explain the initiative of the European Union to present a draft Code of Conduct on Outer Space activities in December 2008. This collection of voluntary confidence-building measures has had a difficult diplomatic roll-out, with over five years of EU-conducted consultations still not resulting in an agreed product. An evaluation of the Code's contents concludes that its most promising elements lie in its provision for an on-going, institutionalized discussion of outer space issues amongst subscribing states. A review of reactions to the proposed Code on the part of leading space nations highlights some of the outstanding areas of concern. Unless the EU finds a way to "multilateralize" the negotiation of the Code it may prove difficult to bring this initiative to a successful conclusion.

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About the publisher:

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The Diplomacy of Space Security: Whither the International Code of Conduct?

The Space Security Context

If an extra-terrestrial were to land on planet earth and inquire politely after what was being done about ensuring the security of outer space, he/she/it would be struck by an apparent paradox. On the one hand there would appear to be a strong, almost universal consensus that states should reinforce the existing legal regime applicable to outer space to enhance its effectiveness. On the other hand, there has been no real progress by these same states in achieving this goal. While there is a stress on the necessity of further measures to prevent an arms race in outer space, this “necessity” has not resulted in any further internationally agreed measures to realize this aim. An extra-terrestrial or even an informed citizen here on earth might rightly ask why this is the case. Indeed for those professionally concerned with the diplomacy of space security¹, it is difficult to avoid acknowledging a perennial disconnect between “word” and “deed” when it comes to assessing the intentions of states.

States claim that they have concerns with the potential for an arms race in and the “weaponization” of outer space and that such developments would pose a “grave danger for international peace and security”. They even assert that there is an “importance and urgency” in preventing such a calamity, yet very little has been done to respond to this identified threat in practice.² Outer space is a realm, the importance of which seems to be in inverse proportion to the amount of attention it has received in multilateral diplomacy. The foundational Outer Space Treaty (OST) of 1967 established key principles to govern the exploration and use of outer space. It conferred a special status on outer space, including the Moon and other celestial bodies: that of the common “province of all mankind”. The exploration and development of this special realm was to be undertaken for peaceful purposes and “for the benefit and in the interests of all countries”.³ The OST’s prohibition on national appropriation represented an important element of conflict prevention given how often clashes over conflicting sovereign claims have fueled armed conflict. The treaty also had significant arms control and disarmament features such as its

ban on the stationing of weapons of mass destruction (WMD) in orbit, the presumptive avoidance of harmful interference and the prohibition on the militarization of the moon and celestial bodies.

Despite these major achievements, the OST failed to provide for any supporting infrastructure for the benign and cooperative regime it created. The treaty makes no provision for any on-going monitoring of and support for the implementation of its provisions. It is telling that although the treaty has achieved wide support within the international community (100 states parties) there has never been even one meeting of its member states. In some way the OST resembled an ambitious building project, for which in keeping with the architect's grand vision, an impressive façade had been raised but on which further work had ceased, leaving a hollow interior and no supporting infrastructure.

Of course this is not to suggest that multilateral action in furtherance of the OST's goals was non-existing. The United Nations' system did afford some attention to the issues of outer space through the activity of two of its bodies: the Committee on the peaceful uses of outer space (COPUOS) which meets annually in Vienna and the 65-nation Conference on Disarmament (CD) that convenes for the first half of each year in Geneva. In accordance with an early division of labour between the two bodies, the international security dimension of outer space was seen to be the purview of the Conference on Disarmament. As early as 1982, the Conference on Disarmament had added an item on "the prevention of an arms race in outer space" (PAROS). It also managed to establish, in 1985 an Ad Hoc Committee devoted to an examination of issues relevant to this item. The Ad Hoc Committee was active for the subsequent decade but ceased its work in 1994. Efforts to re-establish the Committee in 1995 failed, victim to disagreements amongst participating states over the CD's programme of work as well as the effects of the stringent consensus procedures practiced by the Conference. Thus, the CD's official treatment of outer space terminated in 1995 never to be resumed, although a space security item remains on its agenda to this day.⁴

The CD's prolonged failure to agree on a programme of work which would include some consideration of outer space security has served to underscore the incompleteness of the existing legal framework based on the "peaceful purposes" orientation of state action in outer space. For

despite this express peaceful orientation, the OST did not definitely close the door on weaponization of outer space as the treaty's ban on weapons is limited to the stationing of WMD only. This potential vulnerability in the OST coupled with the long impasse at the CD, preventing further work on outer space security was disquieting for many states. Indeed since 1981 when the threat of space weaponization and warfare was first raised at the UN, states have regularly and consistently expressed their support for additional measures to "reinforce" the regime established by the OST. This appeal by states is most clearly indicated through the "Prevention of an Arms Race in Outer Space" resolution which the UN General Assembly has adopted annually since the early 1980s with near universal support. Its most recent iteration (A/RES/68/29) was adopted with no opposing votes and only two abstentions (USA and Israel). This resolution's call for states to take further measures however, as noted earlier, has not been translated into any significant action and its annual reiteration at the General Assembly has taken on a quasi-ritualized form largely devoid of practical consequence.

The Motivating Events

This situation of declaratory concern coupled with a lack of remedial action might have been allowed to continue indefinitely, as is often the case in the multilateral system, but two external events seem to have roused states from their complacency regarding outer space security. These events were the demonstrations of an anti-satellite weapons (ASAT) capability conducted by China and the U.S. in early 2007 and 2008 respectively. The re-emergence of ASAT tests by leading space powers after these had been quietly abandoned for a quarter of a century (Soviet and American tests and associated ASAT development having been shelved in the mid- 1980s) was a very disconcerting development. It raised anew the specter of state-conducted attacks against satellites and the possibility of the benign operating environment of outer space being transformed into a battle ground with devastating effect on all users. This apparent renewal of a threat coincided with increasing awareness of the dangers posed by space debris to the safe operations of spacecraft. The debris field created by the 2007 Chinese test was large and persistent and the accidental collision of a US and a Russian satellite in 2009 only added to the magnitude of the space debris problem. A further relevant factor was the increasing number of states which were owners of satellites, with this "stakeholder" grouping having

expanded from a dozen or so spacefaring nations to more than 60 states possessing satellites and almost all states being consumers of space-enabled services.

The Diplomatic Roll-out

It is from out of this newly agitated international context that the European Union, in December of 2008, first brought forth its proposal for an International Code of Conduct to govern outer space activities (ICOC). The EU seemed to recognize that the time had come to answer the oft-repeated call of the “PAROS” resolution to reinforce the OST-centered regime with additional measures and put something concrete before the international community. The gestation of the EU initiative has proven to be a long one and its diplomatic “roll-out” subjected to various fits and starts. In an early exposé of the code at the CD, the Czech diplomat representing the EU Presidency of the day spoke of “the longstanding position of the EU...which favours the enhancement of the multilateral framework concerning the preservation of a peaceful, safe and secure environment in outer space”.⁵ In this regard, the EU representative described the main objective of the proposed code of conduct: “to strengthen the safety, security and predictability of all space activities, inter alia by limiting or minimizing harmful interference in space activities”.⁶ Significantly, the EU while informing the CD of its initiative declared that “it is not our intention to negotiate the code in this forum”. Given the deadlock in the CD, which had already extended for ten years when the EU unveiled its initiative, this decision could have been viewed as simply a matter of prudence. However the EU subsequently argued that, given the overarching nature of the initiative, it “would not be suitable to hold substantive multilateral discussions in any existing international fora dealing exclusively with either non-proliferation and disarmament issues (e.g. CD) or the civilian uses of outer space (e.g. COPUOS)”.⁷ The EU opted instead for open-ended consultations with an ultimate aim of convening an ad hoc diplomatic conference at which the code might be adopted.

The initial draft of the ICOC was presented in December 2008 as a basis for consultation with partners and considerable time was spent over the next few years on bilateral outreach to selected interested space-faring states. On the basis of such consultations, new versions of the code were generated in October 2010 and June 2012. Up until then the EU had decided to follow

a “hub and spoke” approach to its consultations. Parties being consulted were invited to submit views and suggestions and then the EU after some reflection prepared a new text. Bilateral partners were frequently disappointed however that the suggestions they had made had “disappeared into a black hole in Brussels” and were not reflected in the revised version of the code.⁸ The management of the consultations was also adversely affected by what at times seemed a revolving door of EU officials responsible for the initiative. By June 2012, the EU decided on a different tack by convening a multilateral consultation of some 40 states on ICOC on June 5th in Vienna on the margins of a COPUOS meeting. An EU press statement released after the Vienna consultations indicated that a further multilateral consultation would be held in New York in October 2012 with a view to adopting the code in 2013. The October meeting however was never held, nor was a January 2013 meeting that was supposed to replace it. A further multilateral consultation was finally held in Kiev in May 2013 with the latest version of ICOC being issued in September of that year ahead of a further consultation in Bangkok in November. The number of participating countries in these consultations had also increased with 61 states present in Kiev and 66 states attending the Bangkok meeting. Having missed successive years for convening the envisaged ad hoc diplomatic conference, it is not surprising that EU officials are now rather circumspect in projecting a date for this event. Ambassador Jacek Bylica, the special envoy for non-proliferation and disarmament of the EU’s External Action Service and the current lead on the ICOC file, has recently said that he hoped to bring ICOC to some kind of conclusion in 2014.⁹ Although Ambassador Bylica made reference to another forthcoming revision of the ICOC and further round of consultations to be held in late May, in terms of contents, we probably should not anticipate major changes to the current September 2013 text that has emerged after over five years of the EU-led consultative process. Before proceeding to discuss the reactions of key states to the ICOC and the EU consultative process the following section will assess the contents of the text as it now stands.¹⁰

Evaluating the Text

The drafters of the ICOC would readily acknowledge that the text is largely a compilation of principles and provisions drawn from existing space-related agreements and declarations. Its purpose is simply set forth in the first article as being “to enhance the safety, security and

sustainability of outer space activities”. An early link is made with transparency and confidence building measures, steps which long have been espoused by states as representing the type of measures which could serve the aim of reinforcing the legal regime for outer space called for in the PAROS resolution. Thus the code describes itself (in section 1.3) as “a regime of transparency and confidence-building measures” that is “complementary to the normative framework regulating outer space activities”. This association of ICOC with transparency and confidence-building measures is perhaps best understood as a framing device which imparts some status to ICOC as a compendium of the type of measures long advocated to strengthen the OST-based space security regime.

While it has been clear from its inception that ICOC was to be a political arrangement rather than an international legal instrument, it is noteworthy that an explicit statement to this effect (“This Code is not legally binding”) was deemed necessary to include, presumably to assuage American anxieties that any suggestion it was legally constraining would draw domestic political opposition. Section 3 is essentially a listing of agreements and declarations to which the subscribing states “reaffirm their commitment”. The theme of compliance with existing commitments also appears in Section 4, “Measures on Space Operations and Space Debris Mitigation” wherein states commit to implement the Space Debris Mitigation Guidelines already endorsed in UNGA resolution 62/217 of 2007 or the regulations of the International Telecommunications Union governing allocation of radio spectra and orbital assignments. Going beyond these existing commitments, Section 4.2 expresses a resolve to “refrain from any action which brings about, directly or indirectly, damage, or destruction of space objects unless such action is justified...” There follows three conditions which would justify such action: “imperative safety considerations, in particular if human life or health is at risk; or by the Charter of the United Nations, including the inherent right of individual or collective self-defense; or in order to reduce the creation of space debris”.

Critics of this key article requiring states to refrain from the destruction of space objects, point out that the exceptions enumerated in 4.2 vitiate its apparent constraint by providing large loopholes be they based on claims of public safety or self-defence. Given the potential for destructive action to further add to the already major threat posed by space debris to secure space

operations by all concerned, the absence of a stronger constraint on such action underscores the security deficiencies of ICOC if measured against the standards of international security accords. Although the code at several points affirms a security rationale (alongside safety and sustainability) there is no specific prohibition or limitation on security-related activities among its provisions. Some formulations seem to even dilute restrictions contained in the OST. For example in Section 4.1, states “resolve to establish and implement policies and procedures to minimize the risk of accidents in space, collisions between space objects or any form of harmful interference with another State’s peaceful exploration, and use, of outer space”. The requirement to avoid harmful interference with another state’s space operations, a key provision of the OST, is rendered here in the weaker form of minimizing the risk of such harmful interference. Of course as a voluntary undertaking designed to be acceptable to the largest number of states, the absence of a real security content for the ICOC can be explained as a function of what that constituency of potential subscribing states was willing to agree to. If the ICOC is viewed through a security lens of confidence-building rather than through the more demanding perspective of arms control, it is easier to see how its architects could conceive of it as providing an important initial collective effort at consolidating and supplementing the existing political-legal regime governing outer space. This confidence-building enterprise also helps to situate the more novel and operational (as opposed to normative) features contained in the last two parts of the ICOC.

Institutional Support

The third part of the code is entitled “Cooperation Mechanisms” and its Sections 5 to 7 set out several notification, information-sharing and consultative provisions that hold more practical interest. Section 5 provides for notification “in a timely manner, to the greatest extent practicable” to “all potentially affected subscribing states” of a range of outer space activities, including pre-launch notifications, proximity maneuvers, debris-creating events and high-risk re-entry events. While it could be said that states already have committed to providing such notifications through a variety of multilateral and bilateral accords, the next section takes information exchange to a new level. Section 6 has states sharing on an annual basis, information on space policies, strategies and procedures to minimize accidents, collisions and the creation of

space debris. The consultation arrangements in Section 7 also introduce new procedures and go beyond those of the Outer Space Treaty in granting an affected state the initiative to request consultations regarding activities of another subscribing state deemed in contravention of the Code. Significantly, Section 7.2 raises the possibility of (but does not go so far as to create a standing capability for) ad hoc fact-finding missions to be staffed by international experts for the purposes of conducting an investigation of specific incidents and arriving at findings and recommendations, albeit “of an advisory nature”. Any such missions would be established pursuant to decisions of the meeting of subscribing states.

Finally in the last part of the Code, under the rubric “Organizational Aspects”, a series of mechanisms are described that if implemented, would provide an on-going capacity for interaction amongst subscribing states and a degree of secretarial support. Section 8, for example provides for annual meetings of the subscribing states with a wide mandate “to define, review and further develop this Code and ensure its effective implementation”. At the same time, it stipulates that the decisions at these meetings “both substantive and procedural, are to be taken by consensus”. This approach carries a strong risk that a dissenting state could block any decision whatsoever (as has been the experience with other multilateral forums with the same restrictive rules of procedure, e.g., the Conference on Disarmament). Subscribing states may wish to refine the meaning of “consensus” in this context and distinguish between substantive and procedural issues if they want to ensure effective decision-making at these key meetings of states.

In addition to the annual inter-governmental meeting, ICOC provides for tangible and on-going institutional support through a “Central Point of Contact”, which is to be “designated by the subscribing states” at their first meeting. The tasks assigned to this entity, as described in Section 9, are *inter alia* to “maintain an electronic database and communications system;” “serve as secretariat at the Meeting of Subscribing States” and to render other organizational functions upon request, specifically with respect to “the preparation and implementation of familiarization activities referred to in section 6.4” (which include visits, observations, dialogues and even conferences – potentially a significant workload). The aforementioned database is further described as a means to “collect and disseminate notifications and information submitted in

accordance with the provisions of this Code; and serve as a mechanism to channel requests for consultations”. Together these envisioned tasks suggest an extensive scope for the ICOC secretariat, in the form of the Central Point of Contact, however this entity is finally defined and structured.

Procedural Innovation?

The secretariat-like duties assigned to the Central Point of Contact, when combined with the ICOC’s informational exchange and consultative mechanisms could potentially represent a major institutional enhancement to the existing regime for outer space security. As noted earlier this institutional support is all the more significant given how absent it has been from the regime centered upon the OST, especially its space security dimension. It is also aligned with the ICOC’s explicit self-identification as a regime of transparency and confidence-building measures that are designed to raise levels of confidence through transparency and predictability as well as habits of regular consultation and inter-action. If the ICOC is to make a real positive difference to the outer space security situation, it will be through use of its innovative “software” of institutional support, rather than by addressing the “hardware” of space arms control or through its re-iteration of longstanding norms. This is not to exclude eventual contributions to these other areas of concerns, but in its present form the code can offer little “value added” to space arms control or norms of responsible conduct. ICOC’s innovative institutionalization of space security, however, holds out the promise of enhancing the levels of trust and cooperation amongst states to a stage that could facilitate the negotiation of more far-reaching agreements.

Reactions of Key States

The ultimate test of the ICOC proposal is of course whether it will attract sufficient support by subscribing states to be perceived as a significant contribution to outer space security and sustainability. To some extent the ICOC seems modeled on the 2002 Hague Code of Conduct for Ballistic Missiles (HCoC) which was an earlier initiative to develop a politically binding arrangement to encourage responsible state behavior and counter proliferation in the related field of ballistic missiles. Member countries of the Missile Technology Control Regime

(MTCR) played a similar orchestrating role for the HCoC as the EU has done with the ICOC. Currently the Hague Code has 136 subscribing states and it is probable that the EU would like to ensure a comparable level of support for ICOC, if not initially, at least within the first decade of being launched. The diplomatic process the EU has chosen to pursue, which has had the EU in exclusive control of the ICOC text even as the concentric circles of consultations have expanded, may prove problematic for gaining acceptance of the ICOC. States understandably have reservations about adhering to arrangements that they have not had a hand in shaping. Corridor conversations with diplomats involved with ICOC consultations have frequently expressed frustration over the manner in which the ICOC consultations have been conducted by the EU. The sense that national views of consultative partners have not been reflected in the revisions prepared by the EU and the lack of a *negotiating* process where all states are on an equal footing have featured frequently in criticisms of the EU process. These procedural complaints are combined with a variety of official views on the substance of the ICOC. The paper will now turn to an examination of the positions being taken with respect to the ICOC by leading states.

United States

As the leading spacefaring nation and alliance partner, the EU was anxious from the start to obtain US support for the ICOC initiative. The US however, under the new Obama Administration was slow to engage on the issue, initially because a review of space policy had been ordered by the Administration. American diplomats would only say that the US had “fruitful and forthright exchanges” with the EU and that the US would “continue to work with the EU and other like-minded nations in efforts to advance voluntary and pragmatic transparency and confidence building measures.”¹¹ In June 2010 the Administration issued its *National Space Policy* which offered support in principle for transparency and confidence building measures in outer space, but did not endorse any particular measures including the EU code. The release in February 2011 by of a *National Security Space Strategy* did not serve to clarify the US stance with respect to the EU code although comments by Administration officials suggested that the EU code was being studied and was illustrative of the type of transparency and confidence building measures the US considered worthwhile. The protracted consideration of what position the US should adopt towards the EU code appeared to be in part, a function of the

Administration wanting to see evidence of EU success in selling the draft to other partners before coming out in support itself and in part an exercise of political prudence given the vocal opposition of some in Republican ranks towards the EU's diplomatic innovation. Finally, on January 17, 2012 the Administration expressed a position of sorts when Secretary of State Hillary Clinton stated 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 Secretary's statement went on to say that the US "has made it clear to our partners that we will not enter into a code of conduct that in any way constrains our national security-related activities in space..."¹² Senator Jon Kyl and 35 other Republicans in Congress wrote the President the next day supporting the Administration's decision not to sign onto the draft EU code and warning against developing any type of arrangement which would have a binding effect on the US without the express approval of Congress. Given the conflicted position with regard to the EU Code – limited interest in its benefits and real concerns about selling it to a hostile Congress – it is not surprising that the Obama Administration has maintained a low profile on the subsequent development of the initiative. American representatives have limited themselves to bland statements affirming continued US participation in the initiative and calling upon all interested states to engage in the process.

Russia

Russia has had a rather special position with respect to the ICOC as it has been arguably the most active state in the area of space security diplomacy. A principal initiator behind the UN and CD's consideration of outer space security, Russia was, with China, the sponsors of the only major treaty proposal for outer space security, the "Prevention of Placement of Weapons in Outer Space" or PPWT that was formally tabled at the CD in February 2008. Russia was the initiator of a series of UNGA resolutions regarding the development of transparency and confidence building measures in outer space and it chaired the UN Group of Governmental Experts on this theme which produced a consensus report in July 2013. That report "took note" of the EU ICOC proposal along with the Sino-Russian PPWT and also referred to several states which had pledged not to be the first to place weapons in outer space. In January 2014 the Russian Ambassador to the CD announced that Russia and China were working on a revised

version of the PPWT which would be submitted to the CD in the near future. He also announced that at the fall UN General Assembly, Russia would introduce a draft resolution expressing the political commitment of states not to be the first to place weapons in outer space.¹³ So although Russia has participated in the ICOC consultations and has avoided overt criticism of the code, it is evident that its political priorities with respect to outer space security lie elsewhere. Its recent re-energizing of its diplomatic initiatives in this realm may reflect an assessment that the EU-led ICOC process is not gaining much traction, especially in the developing world and the time may be ripe to garner new support for Russia's own proposals.

China

China like Russia has been identified with an alternative approach towards securing outer space, namely, legally binding international instruments as exemplified by the PPWT. China more than Russia, has voiced its concerns regarding the limits of voluntary transparency and confidence building measures which “can by no means substitute [for] the negotiation of a new legally binding arms control instrument on outer space”. Chinese diplomatic statements have asserted China's constructive participation in the ICOC consultations but stressed that this exercise should “by no means dilute the work on PAROS in the CD”. The Chinese statements also represent a thinly veiled critique of the EU's handling of the consultations, noting that “The ICOC process should ensure broad participation on an equal and open basis, and fully accommodate substantive or procedural concerns of relevant parties, so as to conclude an international code of conduct acceptable to all”.¹⁴

India

India has been rather cool to the ICOC initiative perhaps because of the EU's failure to engage with Delhi at an early stage. Indian official pronouncements are circumspect, but convey the traditional Indian preference for legally binding agreements in the sphere of international security. The Indian CD Ambassador has reiterated this point and has also stressed the importance of ensuring that “all the major space-faring nations are involved in any multilateral endeavor related to prevention of an arms race in outer space in order to enhance the possibility of universal acceptance of its outcome”.¹⁵

Brazil

While Brazil has been participating in the ICOC consultations it has probably been the most explicit in its critique of the process and the substance of the proposed code. The Brazilian delegation at the General Assembly last October expressed its belief that “this initiative would benefit from an effective multilateral approach and mandate” (i.e., taken out of the controlling hands of the EU). After reaffirming Brazil’s preference for a legally binding instrument, the delegation also criticized the reference to self-defence in the code, which it noted “could be interpreted in a way that justifies the use of force in outer space. This is a scenario we cannot afford to contemplate, not even in theory”.¹⁶

Non-Aligned Movement

Indicative of views held by the Non-Aligned Movement are statements made by diplomats of Indonesia, Egypt, Iran and Pakistan. Common elements include: the privileging of legally binding instruments over political arrangements; the need to have any consultation on outer space-related proposals pursued within UN bodies: taking into account the security interests of all states.¹⁷

Canada

Canada has considerably backed away from the leading role it once played in multilateral consideration of space security. Canada had championed, via working papers in 2007 and 2009, innovative proposals for states to pledge not to weaponize space, not to test or use a weapon against any satellite and not to use a satellite itself as a weapon.¹⁸ While possessing the same convenience of the ICOC’s political versus legally binding status, these proposals also addressed the core security concerns regarding the weaponization of space that had prompted the PPWT and thereby represented a middle course between the two diplomatic options. Canada has not followed through on its early initiatives, however and now it seems content to take a back seat to the EU ICOC endeavor. Canadian statements seem to offer support, if conditional, for the ICOC: “The proposed Code could constitute an important step towards the development of internationally recognized “rules of the road” for outer space activities”. At the same time the

statement suggests that Canada sees deficiencies in the current draft and indicates that Canada will continue to work actively with others “towards improving the text”.¹⁹

Conclusions

The ICOC initiative has had a bumpy ride since its launch over five years ago. The EU has controlled the process from the start and while, as of 2012 it finally transited from selective bilateral to open-ended consultations, it still has not agreed to “multilateralize” the initiative. Until it does so by bringing the process under UN auspices and permitting a true negotiation of the text (as opposed to deciding itself what views and language it will include in the next iteration of the code) the ICOC’s prospects for gaining wide acceptance are not bright. As noted above, leading members of the Non-Aligned Movement are cool towards multilateral arrangements that are not developed jointly within the universal multilateral bodies and over which they cannot defend their perceived security interests by means of consensus decision-making. There is also the deeper resistance of influential space powers such as Russia, China, India and Brazil that have championed other avenues, especially treaty-based ones, for addressing the outer space security challenge. The tepid support the United States has shown to the EU initiative, beyond stemming from the chronic “not invented here” syndrome, also reflects concerns not to provide the domestic political opposition with a target for an issue that is low on the Administration’s international security priorities.

To date the EU has seemed unwilling to relinquish its control over the ICOC which is, after all one of the few tangible manifestations of the Common Security and Defense Policy that EU leaders like to espouse. The responsible EU officials may fear that by transferring the ICOC to a truly multilateral negotiating process, elements they would judge unsuitable could be introduced into the text. If however the EU soldiers on with the existing process it may well find that it will only have a handful of subscribing states when the final product is put before an adopting diplomatic conference. Given the ICOC’s already modest nature and its largely repetitive compilation of existing commitments and principles, a low number of subscribing states could be seen as a retrograde rather than a progressive step in reinforcing the current regime for outer space security. In light of this danger, the EU may prefer to prolong the

consultative process and try to work with individual recalcitrant states to bring them on board. In the end the EU may decide that it would be better to have no ICOC at all than to have one that is only endorsed by a minority of states or is substantially transformed as part of a multilateral negotiating process that the EU no longer controls.

Notes

- 1 This paper was prepared for the Second Manfred Lachs International Conference on Global Space Governance, held May 29–31, 2014 at McGill Institute of Air and Space Law, Montreal, Canada.
- 2 See UN General Assembly resolution “Prevention of an arms race in outer space” A/RES/68/29 adopted 5 December 2013.
- 3 “Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space” aka The Outer Space Treaty. Opened for signature 27 January 1967, available at <http://disarmament.un.org>.
- 4 For more detail see the author’s “The CD and PAROS: A Short History” UNIDIR Resources, April 2011 available at www.unidir.org.
- 5 Statement by Mr. Pinter, Czech Republic, to the Conference on Disarmament, CD/PV.1123, 12 February 2009
- 6 Ibid.
- 7 Ibid.
- 8 Private conversation with representative March 19, 2014 Geneva.
- 9 Ambassador Jacek Bylica, “International Code of Conduct: A Status Update” Remarks at UNIDIR Space Security Conference, 20 March 2014, Geneva. Accessible at www.unidir.org.
- 10 All citations from the “International Code of Conduct for Outer Space Activities” are taken from the version of 16 September 2013 released by the EU’s External Action Service and accessible at www.eeas.europa.eu.
- 11 See remarks of Ambassador Laura E. Kennedy “U.S. Space Policy Review and Perspectives on Various Challenges” March 29, 2010. Accessed at <http://geneva.usmission.gov/2010/03/29/ambassador-kennedy-space-policy-review>.
- 12 “International Code of Conduct for Outer Space Activities” Department of State Press Release, 17 January 2012.
- 13 See Statement to the Conference on Disarmament by Ambassador Alexey Borodavkin, 21 January 2014, Geneva, Permanent Mission of the Russian Federation to the Conference on Disarmament.
- 14 See Statement by the Chinese Delegation at the Thematic Debate on Outer Space at the First Committee, UN General Assembly, October 28, 2013. Accessed at www.china-un.org/eng/hyyfy/t1094040.htm.
- 15 Statement by Ambassador D.B. Venkatesh Varma, Permanent Representative of India to the Conference of Disarmament, Geneva, at the General Debate of the First Committee of 68th UN General Assembly, 9 October 2013. Accessed at www.reachingcriticalwill.org.
- 16 Statement by the Brazilian Delegation on the thematic debate on outer space, First Committee of the 68th General Assembly, 25 October 2013. Accessed at www.reachingcriticalwill.org.
- 17 See statements for the thematic debate on outer space, First Committee of 68th General Assembly by representative of Egypt, 25 October, 2013; representative of Pakistan, 25 October 2013 and representative of Iran, 28 October 2013. Available at www.reachingcriticalwill.org.
- 18 See “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, Conference on Disarmament, Geneva.
- 19 Canadian Statement on Space Issues, First Committee of the 68th Session of the UN General Assembly, 25 October 2013. Accessed at www.reachingcriticalwill.org.