Developing Space Security Law in an Asymmetric World

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The Symmetric Nature of Space Law

- Developed during Cold War
- Balancing act between two symmetric powers: U.S. and the U.S.S.R.
- Result is that the law is structured to:
  - Reduce tensions and likelihood of conflict
  - Deny strategic advantage to either side
- The law relatively permissive
The Asymmetric Nature of Space Activities – Post Cold War

- Multiplicity of actors in space
- New entrants every year
- However old power structures are preserved
  - States naturally seek to retain power and strategic advantage
Reform?

• Many calls for renegotiation of the Outer Space Treaty
  — Is the OST up to coping with the new technological and geopolitical environment in space?

• Flexibility
  — State actors
  — Commercial actors

• Development of soft law to augment hard law
Soft Law

- Two primary sources:
  - State conduct in international incidents
  - Political agreements
State Conduct

• International Incidents Methodology
  —Seeks to examine international incidents as norm indicators
  —Can be used to help better define treaty rights and obligations

• An example can be found in the recent satellite intercepts by China and the United States
ASATs

• The Law
  — China test reasserted that there is no positive ban on ASAT tests or the use of conventional weapons in space
    – Partial Test Ban Treaty
    – OST Article IV
  — Article IX Considerations
ASATs

• “... If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment.”
The major difference between FY-1C and USA-193 was information sharing under Article IX, *de minimis* standard for information sharing—compare with North Korea launch.
• New Developments
  — Obama Administration changed policy on space weapons
    – Will pursue a ban on space weapons?
  — CD adopted a program of work
    – But still no substantive work due to procedural matters
• What is this space weapons agreement going to look like?

• Two models:
  — China – Russia draft treaty
  — EU Code of Conduct
PAROS

• Issues
  — Definitions
    – What is a space weapon?
  — Verification

• Form
  — Treaty or political agreement?
Codes of Conduct

• Political Agreements are more palatable to states
  —Can place limitations but preserve power at the same time
  —Test the waters

• Can also lead to customary international law
  —Powerful
Conclusion

- Space Law is a solid and capable regime
- But it is still developing
- Analysis of soft law developments can lead to a clearer picture of rights and obligations that hard law creates
Thanks!

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