

Geopolitical Challenges to Implementing the Code of Conduct for Outer Space Activities

Written by Michael J. Listner

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MICHAEL J. LISTNER, JUN 26 2012

The Code of Conduct for Outer Space Activities has been on the diplomatic radar since the EU first presented its revised draft of the original 2008 draft for discussion in 2010. The EU then spent the better part of 2011 trying to get both the space-faring and non-space-faring nations of the world to sign onto the non-binding protocol. The significant resistance the EU encountered during its year-long effort to persuade participating nations to agree to the measure culminated with the U.S. announcing in January 2012 that it would not support the current draft, but would alternatively support a new effort with the EU.

On June 5, 2012 this time against the backdrop of the United Nations and with the UN Institute for Disarmament Research (UNIDIR) facilitating, the EU announced a revised Code of Conduct that would be open for participation by all nations. Substantive negotiations on this new proposal will begin in at October at the Multilateral Experts Meeting in New York at the United Nations' Headquarters. All UN member states will be permitted to participate, and the objective is to come to an agreement on a Code of Conduct acceptable to all in the second half of 2013. The EU has outsourced to the UNIDIR the tasks of information dissemination and the exchange of views on this concept of the Code of Conduct, albeit the UNIDIR will perform this function in conjunction with the EU's own diplomatic efforts.[1]

As the new Code of Conduct effort begins, the question is not one of why it should be implemented but rather whether it can succeed. The original Code of Conduct effort ran into substantial obstacles when several nations voiced both common and unique concerns with the EU's approach. In the interim the EU has spoken directly with many of these nations, but it is still uncertain whether all of their concerns have been allayed.

One of the most common objections that space-faring nations and emerging space-faring nations had with the first Code of Conduct effort was that they were not part of the original dialogue and drafting of the protocol. Notably, China, India, South Africa and Brazil expressed this reservation during the negotiations of the original EU draft. The United States found the exclusion of India and Brazil particularly troubling, and has supported soliciting these emerging space powers' views during the new round of negotiations. At the same time, the Council on Foreign Relations' Micah Zenko recently told *Deutsche Welle* that China will not be represented at the upcoming negotiations despite having been invited to participate in this round.[2]

Exclusion was not the only concern that plagued prior negotiations. India, in particular, raised a number of concerns. India's prominent issue with the EU's approach to the Code of Conduct is the lack of a legally binding mechanism, which is a long-standing requirement of some Asian countries. India takes the position that in order to be workable, the Code of Conduct requires a legal framework, enforcement and verification mechanisms, and a penalty mechanism for nations violating protocol. India and other members of the Non-Aligned Nations in the Conference on Disarmament see the lack of a legally binding mechanism as a factor that will undermine and eventually defeat the Code of Conduct's purpose.[3]

A related concern with the Code of Conduct is its principles replicate existing domestic policies. Most of the principles and guidelines proposed in the Code of Conduct exist either in the national space policies of some of the nations involved with the Code of Conduct, or in bilateral and multilateral transparency and confidence building measures

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(TCBMs). Suggesting that countries adopt policies consistent with the Code of Conduct may also be considered an intrusion into the domestic policy-making of nations, who are already developing outer space policies on their own initiative. The argument, however, could be countered by articulating that a nation who is already voluntarily implementing these policies represents a best practice for other nations to emulate by signing onto the measure. The revised Code of Conduct has yet to be made public; yet it is almost certain that it will retain these qualities that were of concern in the original draft and can be expected to remain a concern as negotiations move forward.

China is another wildcard in the Code of Conduct dialogue. Considering China's growing status as a major space-faring nation, its participation in the Code of Conduct is vital and its reluctance to do so could call into question the effectiveness of the negotiations. As noted earlier, China, like India, feels that it has been left out of the consultations on the Code of Conduct up until now, which seems to be the articulated reason for China's anticipated absence from negotiations this October. However, this concern runs counter to China's public statements. For instance, during a speech at the beginning of the 55th session of the Committee on the Peaceful Uses of Outer Space (COPUOS) on June 6, 2012, Ambassador Cheng Jingye, head of the Chinese delegation to the UN, stated that China seeks greater cooperation in outer space in order to preserve outer space sustainability.[4] Considering China's purported support of outer space sustainability, its rationale that exclusion from negotiations during the prior Code of Conduct effort is a legitimate reason for its refusal to participate in the current effort for the Code is suspect.

What is more probable is that while China promotes the sustainability of outer space it intends to do so through its own approach, including its efforts in the UN Conference of Disarmament and its co-sponsorship of the Treaty on the Prevention of the Placement of Weapons in Outer Space (PPWT). The PPWT, which is intended to be a legally-binding treaty and was co-sponsored with the Russian Federation in 2008, proposes a ban on space weapons, which are defined by the treaty as a mean to preserve outer space sustainability. While the PPWT and its predecessor, the Prevention of an Arms Race in Outer Space (PAROS) remain unsigned in the Conference of Disarmament, China has found support within the UN for the measure and as a result has enjoyed a significant boost in its soft power within the UN framework, especially among the non-space faring nations. China recognizes that a Code of Conduct could weaken or even nullify the PPWT, which would also have the effect of diminishing the soft power advantage that China currently possesses. Therefore, participating in a new round of negotiations over the Code of Conduct would not benefit China's geopolitical interests, especially if those negotiations lead to a measure that invalidates their diplomatic strategy.

China's reluctance to participate in and support the negotiations for the Code of Conduct may also be due the fact the Code of Conduct would implicate China's national space policies. China does not have a specifically focused space policy such as the United States, but it has articulated a space policy of sorts in a public white paper released March 2011. [5] The policies within this white paper do not reach the specificity and transparency that the Code of Conduct would encourage. If China became a party to the Code of Conduct or otherwise participated in its negotiation, it would find itself in the position of releasing more internal details about its domestic space policies. This may prove unacceptable to the Chinese government and further hinders China's participation in the Code of Conduct.

Another concern for China has to do with the topic of space debris. Space debris mitigation was a cornerstone of the original Code of Conduct and figures even more prominently in the new effort. China has indicated in the past that space debris is a low national priority and therefore agreeing to abide by and exhibit the behavior encouraged by the Code of Conduct would seem to run contrary to current Chinese interests in regards to space debris mitigation.[6]

China is not the only major space faring nation that has hesitations over the next set of negotiations over the Code of Conduct, however. Russia expressed reservations over the attempt to adopt the original draft of the EU Code and there is no reason to believe that this will change this time around. Russia is a co-sponsor of the PPWT with China and therefore also stands to lose substantial soft power influence if a successful Code of Conduct is implemented.

Russia's stated objections, however, have more to do with the use of transparency and confidence-building measures (TCBMs) such as the Code of Conduct. Russia has acknowledged the utility of past TCBMs that addressed issues relating to space activities, and has itself used unilateral TCBMs specifically in regards to

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notifications of launches and its pledge not to be the first to deploy space weapons. Moscow has also stated it will continue to support the use of TCBMs, which could include the Code of Conduct, if only to lay the groundwork for adoption of the PPWT, and has also contended that the adoption of the PPWT would be the most important confidence-building measure in outer space.[7]

However, this line of reasoning creates an unviable proposition for the United States in particular. Recent reviews by the US State Department have concluded that the PPWT does not meet the criteria for adoption as enunciated in the US National Space Policy of 2010 in that it is not equitable to the United States, it cannot be verified, and it does not enhance the security of the United States and its allies.[8] Russia does not view the United States refusal to endorse the PPWT kindly, and this animosity may dissuade Russia from signing onto or otherwise supporting this Code of Conduct or any other TCBM designed as a standalone measure to address outer space security.

Ultimately, the Code of Conduct's fate could rest with the United States. Even though the United States has thrown its support behind the new European initiative, this fact alone does not necessarily guarantee that the national security concerns that led to the United States to withdraw its support from the EU's original draft will be addressed to its satisfaction in the new effort. If the United States decides to again withdraw its support because of national security or other concerns, nations that would have otherwise agreed to this new Code of Conduct may decide to withhold their support as well.

Nevertheless, even if the United States and its allies sign the measure, the effectiveness of a Code of Conduct that lacks Russian and Chinese support is questionable, and thus may be considered a hollow victory for the EU. On the other hand, all is not lost if the Code of Conduct fails to pass muster again. The issue of outer space security is of too much importance to be left to chance, and in the vacuum left by the failure to adopt a Code of Conduct, best practices, informal understandings, voluntarily action, and custom may soon fill the void.

Michael J. Listner is an attorney and analyst and consults on matters relating to space law and policy. He serves as General Counsel for Space Safety Magazine and is a contributor to that publication.

[1] Press Release, EU launches negotiations on an International Code of Conduct for Outer Space Activities, Brussels, June 6, 2012.

[2] Jessie Wingard, The Battle for Cooperation in Space, Deutsche Welle, June 14, 2012.

[3] Dr. Rajeswari Rajagopalan, Debate on Space Code of Conduct: An Indian Perspective, Observer Research Foundation, ORF Occasional Paper #26, October 2011.

[4] General Statement By His Excellency Ambassador Cheng Jingye Head of Chinese Delegation At The 55th Session of UN Committee on the Peaceful Uses of Outer Space, June 6, 2012.

[5] See Xinhuanet, "Full text: China's National Defense in 2010", March 31, 2011.

[6] Michael J. Listner, EU Code of Conduct: commentary on Indian concerns and their effect, The Space Review, November 28, 2011.

[7] Michael J. Listner, TCBMs: A New Definition and New Role for Outer Space Security , Defense Policy.Org, July 7, 2011.

[8] The National Space Policy of 2010 states in part that "The United States will consider proposals and concepts for arms control measures if they are equitable, effectively verifiable, and enhance the national security of the United States and its allies."

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