Boosting the international code of conduct for outer space activities?

Challenges ahead

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As we all know, space activities raise challenging issues, not only for engineers but also for diplomats. Indeed, this particular activity is made of paradoxes and two at least can be listed:

- In the first place, space has been considered as a highly valuable environment for national security and for the exercise of political sovereignty, while in the same time, it has been creating more and more interdependency between an increasing number of nations; This is due to the high specificity (also in terms of physics) of the space environment. Hence, in space national security goes hand in hand with collective security.
- Second, the more countries use space, the more it is used both for commercial and security purposes. Given the interdependency factor already evoked, this has been creating inherent contradictory situations that have to be addressed. Let us recall that today, almost 60 different countries have been owning at least one satellite in orbit.

For two decades or so, collective space security have taken a high profile. It is no surprise that this debate has emerged for two distinct reasons:

- One lies with the risks brought about by the ever more polluted space environment with lethal debris resulting from the ever increasing space activity as a whole.
- The other reason relates to specific military threats that have been symbolized by the Chinese ASAT test occurred in January 2007. Other events that have occurred since then have reinforced the feeling that the use of space may evolve from a military standpoint. As we are no more in the cold war era, space systems are no longer mainly viewed as precious systems to each superpower for helping manage the strategic bilateral relationship. Space systems are now used for other military purposes, not only for reinforcing the mutual deterrence any more. Then space systems may tend to lose their implicit protective status to be more classically perceived by military strategists as systems to be targeted if conflicts arise.

But all this after all is reflecting the inherent dual nature of the space activity. And this is also making collective space security difficult to handle. In other terms, regulating space security issues is not about counting tanks. But it may be more about guessing political and military intent of satellite moves for example. This is already a complex issue for any military planner. Additionally, the more the international community will want to regulate potentially hostile activities and diminish the threat, the more it will affect the space activity at large.

This has created a specific dilemma for space regulation in a context where space activities are expected to expand in an unprecedented way. It suffices to consider the burgeoning private activity

in the field of small and nano satellites, in the field of private launchers, or even the planning of future (even if still uncertain industrial activities in space.

In front of this situation, two schools of thought have emerged:

- One addressing military issues per se, insisting on the necessity to create new treaties. One can quote the PPWT or the no first use of weapons in outer space initiative. This approach has its merits even if the content of these proposals can be challenged. At least, it is clearly defining the issues by limiting the scope to apparent and deliberate military actions.
- Another way of approaching the issue has been represented by the Code of Conduct initiative (ICoC) promoted by the EU, and which has been both more ambitious and less military-oriented. It also has its merits by fostering the involvement of actors in a collective Transparency and Confidence Building Measure (TCBM)-oriented effort. However one major difficulty has precisely been the fact that it does not seem to delineate clearly the scope of its ambitions. While it does not clearly target deliberate military –oriented activities in space, it does not exclude them as well. It has then put itself in a situation that does not allow any consensus on the perimeter of the issues addressed, with existing national antagonistic views among the international community. Additionally, other critics have arisen, for example questioning the relevance of the International CoC for outer space activities when compared to other existing regulating texts such as the Hague Code of Conduct against Ballistic Missile Proliferation (HCoC) that may also help regulate part of the space activity.

Of course, a number of improvements have been made due to an efficient incremental process based on a number of consultative meetings and it is striking to see the evolution of the draft CoC since 2008. However, regarding the future of this approach, and in the aftermath of a largely discussed UN session occurred during the summer of 2015 on this issue, it seems necessary now to make sure that a consensus is reachable on the perimeter, on the final objectives of the text and on the way to proceed. In particular, the inherent dual nature of space activities must be in the center of the discussions for at least two reasons:

- Clarifying the notion of space security as considered by the text. One issue will be to clarify the notion of self-defense referred to in the text and that has appeared as a show stopper for many countries that suspect such a notion to give a green light to an increased militarization of space from the part of the established space faring countries.
- Clarifying the fact that fostering collective security in space does not mean preventing emerging space countries to undertake space programmes that may involve a whole range of activities, from launcher to satellite-building and operating. The promoter of the text will certainly have to be more proactive in showing how much such a CoC will indeed support emerging national space programmes.

Again, even if clear improvements have been made in the context of the code elaboration process, the highly political nature of the domain may require this explanation accompanying exercise. Hopefully, this prerequisite will help more countries to adhere to the very principle of this highly necessary effort.