"The Outer Space Treaty and the Future of Space Security Diplomacy"

On October 10, 2017 we will mark the 50th anniversary of the entry into force of the Outer Space Treaty (OST). Anniversaries are useful occasions for acknowledging important milestones in the life of individuals as well as communities. For the international community the activation of a legal treaty governing the status and use of outer space was an event of the upmost significance. One would have thought that the golden anniversary of such an event would have been hailed and celebrated with great fanfare by the global community that has benefited enormously from the regime it established. And yet this occasion is likely to come and go with barely an acknowledgment by the 105 states parties to the OST, let alone the wider stakeholder community. This benign, or perhaps malign neglect of the OST is of concern. It speaks to negative trends in space security conduct and casts a shadow over the future prospects for cooperative security diplomacy for outer space.

We will discuss the reasons for these developments shortly, but let us first recall the crucial foundational principles and provisions that were enshrined in the OST half a century ago. At their core was the designation of outer space as a “global commons” “the province of all mankind” in the language of the treaty. This special status for outer space meant that it was “not subject to national appropriation by claim of sovereignty”. We can better appreciate the significance of this designation as a conflict prevention measure, if we recall how often disputes over territorial and sovereignty claims have triggered war here on earth.

The treaty called for the exploration and use of outer space to be carried out “for the benefit and in the interests of all countries” and provided for consultation in the eventuality that an action by one state might cause “harmful interference with activities of other States Parties”. This was a holistic and collective understanding that the many and not just the few should benefit from exploitation of outer space and that use should be carried out in a manner that did not interfere with anyone else’s activity.

The treaty affirmed that outer space should be a realm “for peaceful purposes” and backed this up with specific prohibitions against the stationing of Weapons of Mass Destruction in space as well as the militarization of celestial bodies. The treaty provided for measures to reinforce this cooperative orientation via observation of launches, visits to space-related facilities and consultative arrangements. All in all an impressive, legally-binding framework for maintaining safe and secure access to outer space.

On the basis of this peaceful regime, activity in outer space has expanded greatly in the decades following the entry into force of the OST. Today some 1400 satellites are currently active and over 60 states or consortium own space assets. A burgeoning private sector is generating every more ambitious plans and projects for accessing space and introducing into orbit hundreds if not thousands of new satellites. Every country on the globe is benefiting from space-enabled services and the collective contribution of space to the world’s security and well-being is vast and varied. All of this activity is premised on continuation of the benign operating environment of space, essentially free up to this point from man-made threats against space assets.
This politico-legal regime conducive to further productive use of outer space is alas being challenged if not openly undermined. The three depositary governments of the OST (the US, UK and Russia) are not only inactive in officially marking the treaty’s major anniversary, but seem to be ignoring its very existence and that of the cooperative security paradigm it represents. The recent G7 Foreign Ministers’ statement on nonproliferation and disarmament has a paragraph on outer space, but fails to mention the OST and the 50th anniversary it will mark this year.

This neglect of the Outer Space Treaty by the very states that championed its creation points to a disturbing trend in contemporary space security affairs, one that ignores the constraints on the behaviour of actors in space in favor of emphasizing unrestricted freedom of action and the development of national security-related capabilities that could support unilateral moves.

The testing of anti-satellite weapon capabilities, initially by China in 2007 and then by the United States in 2008 revived the long dormant threat of the weaponization of outer space and the targeting of satellites. Allegations of further developments of ASAT capabilities reaching into even geo-synchronous orbits have been traded amongst the three leading space powers. The realities of these military programs are concealed from public scrutiny under thick mantles of secrecy, but what is clearly on display is escalating threat perceptions and associated rhetoric by relevant officials. Against a backdrop of deteriorating geopolitical relations, these oblique accusations of hostile intent and/or activity in the space arena, provide ready substantiation for building up of national counter-space capabilities thus fueling an incipient arms race. An arms race that the international community has pledged to prevent. Diplomatic alternatives to this self-fulfilling military prophecy of clashing space power are apparently not being considered or pursued.

What should the rest of the international community and the broad stakeholder community do in the face of these negative trends? Countervailing diplomatic initiatives to shore up the benign regime based on the OST and fill in some of its lacunae are needed, but the recent experience in this regard leaves much to be desired. The following is a brief survey of what has been attempted and what might be undertaken at this juncture.

First, the international community has long recognized that the OST alone is not sufficient to preserve security in outer space. Via the UN General Assembly resolution on “The Prevention of an Arms Race in Outer Space” or PAROS that has been a regular feature of the Assembly’s First Committee (Disarmament and International Security) since the early 1980s further policy direction has been consistently provided. The widely-supported PAROS resolution (only two abstentions and no opposing votes) has long affirmed that “the legal regime applicable to outer space by itself does not guarantee the prevention of an arms race in outer space...[and that consequently] there is a need to consolidate and reinforce that regime and enhance its effectiveness”. The resolution goes on to stress the need for “further measures” and for states “to refrain from actions contrary” to the peaceful use of outer space objective.
The utility of this clear policy direction has been negated however, from the perspective of practical diplomacy, by the resolution’s calling on the Conference on Disarmament to establish a subsidiary body to carry forward this work. But what planet are the sponsors of this resolution living on? Have they failed to notice that the Conference on Disarmament has been in a state of gridlock for 20 years unable to establish a subsidiary body on outer space or on any other item of its agenda? Instead of perpetuating this charade the supporters of the PAROS resolution must find a more realistic path forward.

Such realism would have to recognize that the few major initiatives to supplement the OST regime proposed in the last decade have failed to come to fruition and have tended to highlight differences amongst states rather than to overcome them. Let us now quickly review these initiatives and suggest alternative approaches to progress their aims.

In this category belongs the Sino-Russian proposed treaty for prevention of placement of weapons in outer space (or PPWT). The treaty officially tabled in the Conference on Disarmament in 2008 with a revision tabled in 2014 has drawn criticism from some quarters for its lack of definitions, verification provisions and for its restricted scope. Consideration of the draft treaty, the leading current example of an international legal instrument for state conduct in outer space, has also suffered from the lack of a relevant subsidiary body within the Conference on Disarmament to discuss it. This problem has been compounded by the refusal of its sponsors to bring the treaty before any other multilateral forum, reflecting a fixation on forum rather than functionality. The sponsors should reconsider this self-imposed constraint and if they continue to see value in the PPWT organize some other forum for its consideration.

The other major proposal that has experience a diplomatic “failure to launch” is the EU-initiated Code of Conduct for Outer Space Activities a voluntary set of measures designed to promote the safety, security and sustainability of space activity. This audience will recall that the proposed Code was brought before a multilateral meeting in July 2015 in New York in the hopes that the text could be finalized. This was not to be however as a significant number of states insisted that such a Code needed to be developed pursuant to a mandate authorized by the UN General Assembly. There are suggestions that the EU may try to repackage the Code as a set of Principles via an UNGA resolution, but this would be a retrograde act in my opinion as the Code itself was largely a mélange of existing principles and commitments. What was most innovative about the Code was its provisions for institutional support and on-going state discussion of its implementation, elements which would be lost in a simple declaratory resolution. The promising elements of the Code merit being re-introduced as part of an UNGA-mandated open-ended negotiation which would ensure any product the status and legitimacy it would need to be a productive complement to the existing OST. It would be fitting for the EU states to be part of such a renewal of the Code project, but its prospects would benefit from a broader and cross-regional set of sponsoring states.

The third problematic initiative was the Russian-led resolution on “No First Placement of Space Weapons” adopted at the UN General Assembly for the first time in 2014 and again in 2015, and 2016. This resolution was viewed by some as potentially
establishing a justification for the development of space weapons in order to retaliate if a state actually was responsible for being the first to introduce weapons in space. These concerns help to explain why a substantial subset of member states (some 50) have either abstained or opposed the resolution. This divisive outcome is no victory for space security and its sponsors might wish to test the reaction if they were to drop the adjective “first” from the resolution’s text.

On the positive side of the ledger for space security diplomacy we must note the consensus report issued in 2013 by the UN Group of Governmental Experts (GGE) on “Transparency and Confidence Building Measures” (TCBMs) in outer space. This GGE report set out a substantial list of TCBMs that could contribute to space security. The report also recommended a joint session of the First and Fourth Committees of the General Assembly to combine the two not always joined up dimensions of the UN's involvement in space policy. This joint session was duly held in 2015 and a further joint meeting is envisaged for 2017. It is disconcerting to compare the extensive preparations underway for UNISPACE+50 with the lack of preparations for the joint session. It would be beneficial if UNOOSA and ODA formed a working group to develop a substantive agenda for the joint session and organize consultations in Vienna, Geneva and New York to solicit input from states. While no one would contest the positive nature of the GGE report, it still remains to be seen some four years later whether recommendations of greater significance for space security than half-day joint sessions at UN HQ will be taken up by states and implemented.

Another positive development occurred in 2016 when the UN's Committee on the Peaceful Use of Outer Space (COPUOS) was able to agree on an initial set of guidelines emerging from the multi-year working group on the long-term sustainability of outer space. Although tangential to space security concerns per se the guidelines posit further international cooperation. If followed up with early agreement on the next set of admittedly more demanding proposed guidelines a positive momentum might be generated, but again this seems an iffy proposition at this point in time.

To conclude, the future for space security diplomacy at present is not rosy. Differences among leading space powers are being accentuated while threat perceptions and military programs based on them are increasing.

The international community needs at this juncture to re-establish a common purpose with respect to outer space. The fiftieth anniversary of the OST provides a unique occasion to reaffirm the peaceful purposes orientation of the treaty. It is not too late for one of the 105 signatories to host what would be the first ever meeting of its states parties. A golden anniversary meeting would also be a natural focal point for a re-energized campaign to promote universalization of the treaty – starting with the 24 states that have signed but not ratified the treaty. Such a meeting of states parties would constitute both a fitting commemoration of this key treaty as well as serve as an impetus for re-instating international cooperation as the preeminent aim for the outer space regime.