

“Do TCBMs have a Future?” Remarks by Paul Meyer, Senior Fellow, The Simons Foundation, UNIDIR *Space Security: the Next Chapter*, May 7-8, 2018, Geneva, Switzerland

Five years ago this summer, a fifteen man UN Group of Governmental Experts (GGE) completed its report. This was remarkable in at least two ways. From the current perspective, the fact that the Group was comprised of entirely men would raise eyebrows and speak to the endemic problems of gender balance in UN enterprises. The second and more positive remarkable feature was that the GGE had been able to arrive at a consensus report that was also of major substantive significance. The report was on the subject of “Transparency and Confidence-Building measures in Outer Space activities” and its contents represented something of a high-point in the multilateral diplomacy of outer space.

Although outer space activities have grown exponentially since the Outer Space Treaty of 1967 established a special “global commons” status for space, it has proven difficult for the international community to agree on ways of supplementing the Outer Space Treaty with other measures. Despite the fact that the UN General Assembly adopts annually with near universal support a resolution on the Prevention of an Arms Race in Outer Space (PAROS) that calls for additional measures to reinforce and render more effective the existing regime for space represented by the OST, such measures have not been forthcoming.

The Conference on Disarmament which also has PAROS on its agenda since 1982 has been unable to address it officially via a dedicated subsidiary body as a result of a general paralysis of this forum that has prevented it from adopting a program of work for some 20 years. Efforts by some member states, notably Russia and China, to initiate work on their proposed treaty on the Prevention of Placement of Weapons in outer space (PPWT) have been stymied by this situation within the CD in addition to the criticism of their draft treaty expressed by the US and some other states.

This blockage was also occurring at a time when concerns over a revival of anti-satellite weapons (ASATs) dormant for decades had surfaced with tests of such capabilities carried out by China and the US in 2007 and 2008 respectively.

Against this backdrop, the fact that a reasonably diverse set of states (including all the P5) could develop together a substantive and forward-looking report on TCBMs constituted something of a TCBM itself; a fact that the Group proclaimed (rather immodestly) in its report. The report acknowledged that outer space was “congested, contested and competitive” in this well-worn phrase and warned that “threats to vital space capabilities may increase during the next decade as a result of both natural and man-made hazards and the possible development of disruptive and destructive counterspace capabilities”.

The GGE responded to this dangerous trend however by generating several TCBMs which they saw as “helping both to prevent military confrontation and to foster regional and global stability”. The Group not only set out specific TCBMs under the rubrics of information exchanges, notification of space activities, risk reduction measures, visits and consultative

mechanisms, but it also enumerated criteria to apply to proposed measures in future to establish whether they would truly fulfill the function of a TCBM. The Group's report reflected a strong cooperative orientation that "encouraged further development of international cooperation between spacefaring and non-spacefaring nations in the peaceful uses of outer space for the benefit of all States".

The GGE not only suggested the usual consideration and implementation of their recommendations by states, but also proposed that the UN General Assembly help take this work forward by convening the first ever joint session of the First and Fourth Committees of the GA "to address possible challenges to space security and sustainability". This joint session, which brought together the two dimensions (solitudes might be a more apt term) of the UN concerned with the security and conduct of operations in outer space was duly held in October 2015 with a further joint session convened in 2017.

All this agreed, substantive recommendations seemed to augur well for early adoption of the GGE's suggestions, but with the exception of the idea of the joint session of the GA committees, the GGE report has largely been unacted upon by the international community. Instead of building upon this consensual base and working to implement the TCBMs suggested, state action seemed to move in the opposite direction. Part of this had to do with escalating threat perceptions in which leading space powers were openly accusing each other of developing counterspace capabilities and planning to employ these capabilities against space assets of the other countries. Official discourse moved from reaffirming space as a "global commons" where all states enjoyed a right of unfettered access, to proclaiming outer space as a 'war-fighting' domain.

Although resolutions were still adopted at UNGA welcoming the work of the 2013 GGE on a consensus basis, they were increasingly eclipsed by new resolutions which were controversial and proved divisive with substantial minorities opposing or abstaining on them. Notably the "No First Placement of Weapons in Outer Space" resolution (first introduced at the GA's 69th session in 2014) sought political commitments by states not to be the first to place weapons in space. There was serious push-back on this resolution which some argued was not in keeping with the criteria for TCBMs agreed by the 2013 GGE. Others were concerned that by avoiding a simple "no placement" pledge the resolution could be seen as justifying the second or third deployment by different states of space weapons if the first use ever occurred. Despite these misgivings the text of the resolution was not adjusted to accommodate them and it has been adopted at subsequent UNGA sessions with similarly large dissenting minority.

The EU initiated International Code of Conduct for outer space activity, introduced back in 2008 and which had been noted by the GGE, also ran into severe headwinds with an effort to finalize its text at a multilateral negotiation convened in July 2015, being rejected by several participating states (notably the BRICS grouping of states) as lacking the mandate of a consensus-based multilateral negotiation within a UN framework. While the chair of the July meeting and EU officials seemed to accept the necessity of moving the negotiation of the Code to UN auspices, they did not carry this initiative further by seeking an appropriate authorization

from the General Assembly. Despite the many positive features of the draft Code, in particular its promising provisions for institutional support for the principles set out in the OST, this potential TCBM appears to be in a diplomatic limbo with no visible champion.

Long-standing differences over the draft treaty on the Prevention of Placement of Weapons in Outer Space (PPWT), pitting its sponsors such as China and Russia against several Western states, most notably the USA has also soured the diplomatic atmosphere for cooperative initiatives. Although the GGE noted the PPWT it did not endorse it and the report's definition of TCBMs as "non-legally binding measures" to be implemented on a voluntary basis, clearly placed these measures in a different category from the PPWT or other proposed international legal instruments. The fact that China and Russia insisted for many years that the PPWT could only be taken up in the context of the Conference on Disarmament, despite its decades long paralysis also contributed to diplomatic tensions with respect to cooperation on space security.

After a decade of beating their heads against the brick wall of CD dysfunction, the chief sponsors of the PPWT finally decided to change tactics and resorted once again to the UNGA to authorize a new GGE "to consider and make recommendations on substantial elements of an international legally binding instrument on the prevention of an arms race in outer space". This GGE with up to 25 members is to get underway this summer and issue its report by the fall of 2019. The resolution establishing this process also produced a substantial dissenting minority, but this new tack will allow for some expert consideration of alternative approaches focusing on legal rather than political measures. Among these approaches will obviously figure the PPWT that was unable to be officially worked on within the confines of the CD. Most observers of space security diplomacy will probably conclude that the new GGE is unlikely to revive the prospects of the PPWT or identify a novel international legal instrument that will command wide support.

It would seem therefore that there could still be an opening for TCBMs if they are to be taken up seriously by states concerned with the current negative drift in international space security affairs. Two possible vehicles for advancing work on TCBMs include the CD Subsidiary Body discussions on PAROS and the working group of the UN Disarmament Commission agreed in April to develop recommendations on implementation of the TCBMs outlined in the 2013 GGE. Without wanting to be pessimistic, one must recognize that neither the CD nor the UNDC has a winning track record of late and it would be prudent to consider other options. In this regard, the private sector and civil society as leading stakeholders in maintaining a safe and secure operating environment in outer space, should also become more engaged on these questions. Instead of the doomsday prophets and the armchair space warriors, it is time for a constituency of space peace activists to become vocal and help uphold the cooperative security premise of the Outer Space Treaty. Advocates of enlightened self-restraint in space security could serve to counter the increasingly bellicose rhetoric from senior military and political levels, especially at a time when thousands of new satellites are being launched to serve humanity's needs. Specifically, this could entail picking up the draft of the abandoned International Code of Conduct and seeking an UNGA mandate to negotiate. It could also involve OST states parties deciding to convene follow-up meetings to examine the rich menu of TCBMs generated by the

GGE and work to implement a number of them in a demonstration of the possibilities of cooperative as opposed to confrontational policies with regard to space security. This will require an active rather than the prevailing passive approach to space security diplomacy and I hope there will be some here today who can contribute to this effort. Thank you.