

TRANSPARENCY AND CONFIDENCE-BUILDING MEASURES: THEIR PLACE AND ROLE IN SPACE SECURITY

Andrey Makarov

Transparency and confidence-building measures (TCBMs) are an integral part of the international legal and institutional framework supporting military threat reduction and confidence-building among nations.

TCBMs are being recognized and upheld by the United Nations as mechanisms that can offer the way to mutual understanding among parties, and reduce misunderstanding and tensions; they promote a favourable climate for effective and mutually acceptable paths to arms reduction and non-proliferation.

In its resolution 39/63E of 12 December 1984, the Commission on Disarmament decided on the confidence-building guidelines later endorsed by the General Assembly in resolution 43/78H. The guidelines stipulate:

[General Considerations]

1.3.1.1 Confidence-building measures must be neither a substitute nor a precondition for disarmament measures nor divert attention from them. Yet their potential for creating favourable conditions for progress in this field should be fully utilized in all regions of the world, in so far as they may facilitate and do not impair in any way the adoption of disarmament measures. ...

1.3.1.4 Confidence-building measures may be worked out and implemented independently in order to contribute to the creation of favourable conditions for the adoption of additional disarmament measures, or, no less important, as collateral measures in connection with specific measures of arms limitation and disarmament. ...

[Principles]

2.1.2 In particular, and as a prerequisite for enhancing confidence among States, the following principles enshrined in the Charter of the United Nations must be strictly observed:

- (a) Refraining from the threat or use of force against the territorial integrity or political independence of any State;
- (b) Non-intervention and non-interference in the internal affairs of States;
- (c) Peaceful settlement of disputes;
- (d) Sovereign equality of States and self-determination of peoples. ...

[Objectives]

2.2.1 The ultimate goal of confidence-building measures is to strengthen international peace and security and to contribute to the prevention of all wars, in particular nuclear war. ...

2.2.3 A major goal of confidence-building measures is the realization of universally recognized principles, particularly those contained in the Charter of the United Nations. ...

2.2.5 A major objective is to reduce or even eliminate the causes of mistrust, fear, misunderstanding and miscalculation with regard to relevant military activities and intentions of other States, factors which may generate the perception of an impaired security and provide justification for the continuation of the global and regional arms build-up. ...

2.2.6 A centrally important task of confidence-building measures is to reduce the dangers of misunderstanding or miscalculation of military activities, to help to prevent military confrontation as well as covert preparations for the commencement of a war, to reduce the risk of surprise attacks and of the outbreak of war by accident; and thereby, finally, to give effect and concrete expression to the solemn pledge of all nations to refrain from the threat or use of force in all its forms and to enhance security and stability. ...

2.2.7 Given the enhanced awareness of the importance of compliance, confidence-building measures may serve the additional objective of facilitating verification of arms limitation and disarmament agreements.

In addition, strict compliance with obligations and commitments in the field of disarmament and cooperation in the elaboration and implementation of adequate measures to ensure the verification of such compliance - satisfactory to all parties concerned and determined by the purposes, scope and nature of the relevant agreement - have a considerable confidence-building effect of their own.

Confidence-building measures cannot, however, supersede verification measures, which are an important element in arms limitation and disarmament agreements. ...

[Implementation]

2.4.2 Since States must be able to examine and assess the implementation of, and to ensure compliance with, a confidence-building arrangement, it is indispensable that the details of the established confidence-building measures should be defined precisely and clearly. ...

2.4.4 The implementation of confidence-building measures should take place in such a manner as to ensure the right of each State to undiminished security, guaranteeing that no individual State or group of States obtains advantages over others at any stage of the confidence-building process.¹

I should like to make a special emphasis on the point that, despite the great importance and role of TCBMs, disarmament measures are essential, and only the disarmament can make a decisive contribution to the prevention of war.

Space activities have a particular place in defence capabilities of all states, and their military interests are one of the decisive factors for its enforcement. As the scope of their military and national security activities in outer space is increasing, several states are becoming more concerned about the risk of transforming outer space into another area of military confrontation.

The application of TCBMs in space activities is not a new issue—the world has long recognized them as an important element to regulate space activities. This has been recorded in General Assembly resolutions (45/55B, 47/51 and 48/74B) that reiterate the importance of confidence-building measures to prevent the arms race in outer space. The resolution on the prevention of an arms race in outer space, adopted every year, recognizes

that specific proposals on TCBMs can become an integral part of an agreement or agreements to this end.

TCBMs are being applied in that or another form in international space law. These are:

- notification of UN Secretary-General, the general public and the international scientific community about the character, conduct, location and results of outer space activities (Outer Space Treaty of 1967);
- provision of data about launched space objects and terminated or modified Earth-orbiting objects (Registration Convention of 1975);
- cooperation in the joint resolution of emerging problems, and so forth.

The Secretary-General presented to the Forty-Eighth Session of the General Assembly in 1993 the report of the Group of Government Experts on the "Study on the application of confidence-building measures in outer space".² The report raised and addressed the following issues:

- the need for transparency and confidence-building in outer space;
- specific features of transparency and confidence-building in space activities;
- proposals regarding specific confidence-building measures in outer space; and
- proposals regarding new mechanisms of transparency and confidence-building in outer space.

Its main conclusions and recommendations were that:

- any space activity should be carried out in the interest of strengthening international peace and security;
- the main problems that raise the concern of the majority of states are related to the potential placement of weapons in outer space;
- transparency measures must be developed in such a way as to take into account the need for strengthening international confidence and protecting national security interests;

-
- in considering eventual confidence-building measures in outer space, the different capabilities of states should be taken into account;
 - in the view of several states, the time has come to start large-scope negotiations with a view to an international agreement prohibiting the weaponization of outer space;
 - relevant confidence-building measures in outer space can become an important step towards the prevention of an arms race in outer space and the peaceful use of outer space by all states; and
 - international cooperation in the exploration and use of outer space is one possible confidence-building measure.

TCBMs in space activities have their own specifics—they can be applied not only to military space activities but also to functions unrelated to defence capabilities or the national security of states.

By their nature, TCBMs in space activities have several dimensions. On the one hand they have individual value that contributes to better mutual understanding and reduces the risk of misunderstanding concerning the activities of other states in outer space, and promotes international cooperation. On the other hand they can be the main or an integral part of a verification mechanism in the framework of an international treaty prohibiting the deployment of weapons in outer space. At the same time, they create favourable prerequisites for the elaboration and signing of a treaty on the non-weaponization of outer space. Finally, the development and application of TCBMs is a relatively easy first step toward strengthening space security.

Since the beginning of the space era, a number of states have proposed various solutions to the prevention of an arms race in outer space and the establishment of a regime of confidence and predictability of space activities:

- The Canadian concept of PAXSAT-A, proposed in 1987–1988 to create a special space vehicle for obtaining data on other spacecraft. The main objective of such a spacecraft would be the detection of functional capabilities of satellites placed into orbit. The PAXSAT-A constellation provided for two or three space vehicles on a high-inclination orbit at an altitude of 500km to 2000km, one

spacecraft on a semi-synchronous orbit and one spacecraft on a geosynchronous orbit.

- In 1978 France launched a proposal to create an International Satellite Control Agency to manage compliance with disarmament agreements and observation of crisis situations.
- In 1988 France proposed another concept, the Satellite Imagery Agency. The creation of such an agency would promote control of compliance with the existing disarmament and arms control agreements and help prevent catastrophes and major natural disasters. Moreover this agency could serve as a centre for training satellite imagery analysts.
- In 1988 the Soviet Union made a proposal to create an International Remote Sensing Agency that would provide the international community with information on compliance with multilateral disarmament agreements and observation of the military situation in conflict areas, for the reduction of international tension. In the view of the Soviet Union, if the results of observations by national satellite systems had been made available to an international organization this would have become a major confidence-building measure.
- Another Canadian concept dealt with a PAXSAT-B space vehicle designed for verification of compliance with conventional arms control treaties in restricted areas.

In the recent years there has been a visible increase of interest towards TCBMs. Some states are applying them at their own initiative. For instance:

- since 2003 Russia is posting on the web information on scheduled launches and their mission for the international community;
- in 2004 Russia announced that it will not be the first to deploy weapons in outer space;
- in 2005 this initiative of the Russian Federation was endorsed by the member states of the Collective Security Treaty, who made similar statements;
- Norway provides notifications on scheduled launches of rocket probes from its range in the Arctic Ocean; and
- on 8 June 2006 the UK delegation made a statement at a plenary meeting of the Conference on Disarmament that the United Kingdom “has no intention to deploy weapons in outer space”.

The above-mentioned measures are not comprehensive neither by the scope of coverage of various space activities nor by participation of states in their implementation. In this connection, the UN General Assembly at its sixtieth and sixty-first sessions adopted the resolutions on transparency and confidence-building measures in space activities that contained a request to Member States to inform the Secretary-General about their views on the need for further development of international TCBMs in outer space aimed at promoting peace, security, international cooperation and prevention of an arms race in outer space, as well as their specific proposals regarding such measures.

The development of TCBMs should not detract us from the main objective—the prevention of an arms race in outer space.

There have been proposals made ranging from simple to complex—since reaching an understanding on a treaty prohibiting the placement of weapons in outer space may take much time, it would be appropriate to focus first on confidence measures, codes of conduct, and the review and promotion of best practices. However, with all their apparent logic, such proposals have a number of shortcomings.

First, unlike the treaty in question, it is not intended that they would have a legally binding character. Second, they do not address the issue of the prevention of an arms race in outer space, and thus outer space would remain open for weaponization. Third, the existing experience to-date shows that states can be “transparent” and “predictable”, but do not necessarily comply with existing international space law, as it happened in 2007 and 2008 with the destruction of two satellites. Fourth, one cannot exclude that such an approach to addressing the problems in orbit would be promoted as the “best practice” and could in time become a precedent. Finally, work that only pursues TCBMs may detract our attention from the task of prevention of an arms race in outer space and substantially slow down the development of a treaty prohibiting the deployment of weapons in outer space—and this runs counter to the guidelines regarding confidence-building measures—“Confidence-building measures must be neither a substitute nor a precondition for disarmament measures nor divert attention from them”.

It is obvious, however, that any proposals regarding the development and application of TCBMs in outer space deserve careful attention and profound review.

CONCLUSIONS

TCBMs are an integral part of the international legal framework of international security, prevention of armed conflict and progress in the field of disarmament.

They are closely related to the issue of prevention of an arms race in outer space.

They contribute to the progress toward reaching agreement on prohibiting the placement of weapons in outer space.

TCBMs, with all their importance and relevance for security in outer space, cannot substitute for comprehensive legal obligations on the prevention of an arms race in outer space.

The drafting of a treaty prohibiting the weaponization of outer space should go in parallel with the development of TCBMs.

They can play an independent role in ensuring space security and remain an integral part of the control mechanism of a treaty prohibiting the deployment of weapons in outer space.

In developing TCBMs we should take into account the need to strengthen international trust and protect the interests of national security, with due regard to differences in the space capabilities of states, and the measures should be clear to all and, no less importantly, be feasible.

TCBMs may be developed and applied bilaterally, multilaterally, regionally or globally.

The issue of TCBMs remain valid and require continuous attention and further development.

Notes

- ¹ General Assembly, *Special Report of the Disarmament Commission to the General Assembly at its Third Special Session Devoted to Disarmament*, UN document A/S-15/3, 28 May 1988, pp. 28–33.
- ² General Assembly, *Prevention of an Arms Race in Outer Space*, UN document A/48/305, 15 October 1993.