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Author: Mr. Michael Listner
United States

AN ALTERNATIVE FROM MARITIME LAW FOR RULES OF THE ROAD IN OUTER SPACE

Abstract

Incidents in outer space over the past five years have reinforced the need for a "rules of the road" for outer space activities. Events such as the anti-satellite (ASAT) test by China against FY-1C and the collision of Iridium 33 and Cosmos 2251 over Siberia in 2009 demonstrate that the current body of international space law is insufficient to address burgeoning space activities by the nations of the world.

The European Union made an attempt to establish rules of the road by proffering its Code of Conduct for Outer Space activities in 2010. The Code of Conduct was intended to be a multilateral, non-binding measure to establish rules of the road relating to space activities as well as address such areas as national security, transparency and space debris. However, the Code of Conduct was met with skepticism from countries such as China and the Russian Federation who prefer a legally-binding agreement to address these matters. It was ultimately rebuffed by the United States, which proposed its own International Code of Conduct.

The International Code of Conduct, like the EU Code of Conduct, is also intended to be a one-size fits all multilateral measure and like the EU Code will likely find objection from nations with differing cultural geopolitical viewpoints. In the alternative, bilateral accords defining conduct such as the Incidents on the High Seas Agreement have been implemented in maritime law. Agreements like this have opened a line of dialogue between the parties involved and prevented incidents and subsequent escalations that could have led to full-blown international confrontations.

Similarly, to define conduct in outer space, nations could engage each other in bilateral accords to define conduct. These agreements, like the Incident on High Seas Agreement, would be designed not to restrict the nature or function of space assets, but rather to reduce the possibility that an international incident would occur through an accident or misunderstanding involving the activities of the spacecraft or to otherwise prevent an escalation of an existing incident through protocols within the Agreement.

Agreements such as this would not guarantee that incidents would not occur through the deliberate acts of the parties individually, but it would reduce the likelihood that incidents would occur through a mistake or misunderstanding and at the same time open an avenue of dialogue that may prevent deliberate acts all together without the complexities of multilateral accords.