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CAN SOFT LAW ANSWER THE ARMS CONTROL DILEMMA IN OUTER SPACE

Abstract

Historically there have been two models of international law designed to control arms in space: the first model is that of multilateral treaties such as the Outer Space Treaty 1967 (OST 67). The second model is that of bi-lateral treaties such as Anti Ballistic Missile Treaty 1972 (ABM 72). These hard law treaties achieved success in relation to arms control in outer space, but this was limited to nuclear weapons and weapons of mass destruction. Soft law has remained a constant paradigm present in the background of outer space treaty development throughout the Cold War and increasingly in the post Cold War era.

Space law has now reached a critical point in its development. One potential avenue of development concerns hard law treaties in relation to arms control in outer space, such as that proposed by China and Russia in the form of the draft Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects (PPWT 2008). This contrasts with calls for a Code in Conduct (COC) in outer space by the European Union (EU) and US. PPWT 2008 offers many potential benefits. These include greater clarity through enhanced definitions of key terms, than was allowed in the OST 67. PPWT 2008 is however unlikely to be agreed upon by the major space faring states such as the US who objects to specific provisions and definitions as being too limiting. By contrast the COC represents a non-binding legal instrument which aims to influence state behaviour in outer space through soft law norms. COC, however, focuses primarily on the sustainability of outer space resources. It only addresses space security secondarily through the prism of transparent confidence building measures (TCBM). COC does not address arms control specifically. For this reason and because it is a soft law instrument, COC does not present an equivalent alternative to the draft PPWT 2008.

This paper examines whether the tools of soft law can provide an answer to the arms control dilemma in outer space, and whether the post Cold-War environment is stable enough to support it. This paper presents the possibility for an alternative course of action which may represent a middle ground between hard and soft law.