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THE USE OF SPACE TECHNOLOGY EXPORT CONTROLS AS A BARGAINING SOLUTION FOR
SUSTAINABILITY: A CHICAGO CONVENTION MODEL OF SPACE GOVERNANCE

Abstract

With the increase in space debris and space traffic, there is growing awareness that sustainable use of space requires improvements in global space governance, yet no binding international treaty has been concluded for almost four decades. Since 1979, we have only seen the development of non-binding measures and statements of principle; so called soft law, which States may ignore with little consequence. There is little national incentive for countries to enter into binding instruments that may impose limits on their freedom of action. Key issues such as space debris and space traffic management may not immediately threaten national interest. However, they threaten the collective interest in the long term, and the question is how to incentivize States towards creating new space governance instruments to ensure sustainable use of space.

Successful international treaties can be described as the striking of a “bargain”, whereby States accept limits on their behavior in exchange for the cooperation of other States. A prime example is the 1949 Chicago Convention on International Civil Aviation, widely seen as the regulatory pillar upon which global civil aviation was built. The Chicago Convention successfully continues to adapt to technologies and to provide incentives for States parties to comply, due largely to the key mechanism of the technical Annexes. State parties agree to comply with uniform standards and recommended practices (SARPs) for the safety and efficiency of air navigation in exchange for the cooperation of other states. Hence there is significant short term economic incentive to comply. Importantly, the SARPs are not part of the Convention itself, and can be amended according to an established formula, without requiring full ratification of changes to the treaty. This permits them to keep pace with emerging technologies and applications as required.

This paper proposes a similar model for a new international convention for civil space activities, which would incorporate SARPs for safety and sustainability in outer space for the conduct of activities such as debris mitigation, traffic management, proximity operations and orbital servicing. National space technology export control mechanisms can be used by states to incentivize compliance. In this model, States could refuse to export space technologies to non-compliant states. Thus, the bargaining mechanism would ensure compliance with long term sustainability interests based on the short term incentive of access to space technology.