

(NTM) or because noncompliance can easily occur for reasons other than deliberate cheating, the more important it is for the treaty to include cooperative means for assessing compliance and addressing compliance concerns.<sup>24</sup>

The OST has even less in these regards than the 1957 Antarctic Treaty, the one earlier multilateral Cold War non-armament agreement. Under the OST, members agree to provide information about the nature, conduct, locations, and results of their space activities "to the greatest extent feasible and practicable" (Article XI); they can "on a basis of reciprocity" observe other members' activities on celestial bodies (Article XII); and they are obliged to consult before carrying out activities that might interfere with other members' use of space and have the right to request a consultation if they are concerned about potentially harmful interference from somebody else's space activities (Article IX). In principle, OST members could use these provisions to interpret the peaceful use requirement as already outlawing any type of orbiting strike weapon, but this would require a special diplomatic or legal initiative, because the treaty has no built-in review process or other routine mechanism for aggregating members' concerns.<sup>25</sup> In practice, even the treaty's minimalist transparency and consultation mechanisms have rarely been used.<sup>26</sup>

As a package, the three new rules proposed by the Canadian working paper would address the most important concerns raised by the Chinese and Russians, the Europeans, and the United States. It would also cover both dedicated space weapons and dual-use capabilities employed as weapons. Because physical combat in and from space would cross an important threshold for space security and would likely permanently damage the space environment, the Canadian proposal concentrates on three central prohibitions against:

- 1) placing in orbit around the Earth any weapon or any objects carrying weapons, or stationing weapons in outer space in any other manner;
- 2) testing or using anything as a weapon against any satellite so as to damage or destroy it; and

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<sup>24</sup> Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, MA: Harvard University Press, 1995).

<sup>25</sup> George Bunn and John B. Rhineland, "Outer Space Treaty May Ban Strike Weapons," Letter to the Editor, *Arms Control Today* (June 2002). Concerns about compliance with the OST have been raised in political fora such as the U.N. General Assembly and COPUOS.

<sup>26</sup> The United States monitored the two flight tests that China conducted before its January 2007 ASAT intercept, but expressed no concerns, which may have led Chinese leadership to assume that the United States would not object after the intercept occurred, either. The United States did not issue a demarche immediately, but waited for more than a week until leaked news of the ASAT test appeared in *Aviation Week and Space Technology*. The United States criticized China for creating large amounts of long-lasting space debris, for its secrecy before the test, and for its failure to provide a full explanation afterwards, but did not claim that the ASAT test was, by definition, a violation of the OST. A number of other countries, including Canada, Russia, the EU, and India, expressed concern about the Chinese ASAT test, but only Japan formally declared it to be inconsistent with "basic international rules such as the Outer Space Treaty." See Gregory Kulacki and Jeffrey G. Lewis, "Understanding China's Antisatellite Test," *The Nonproliferation Review* 15:2 (July 2008) and David A. Koplow, "ASAT-Isfaction: Customary International Law and the Regulation of Anti-Satellite Weapons," *Michigan Journal of International Law* (forthcoming).