

use of force. Most other countries, though, would reject the broad claim that using satellites to support or conduct preventive military action would be legal without Security Council authorization.<sup>22</sup> Some have gone even further and asserted that advanced U.S. space capabilities aimed at perpetuating the nation's position as the world's sole military superpower are "counter to the fundamental principle of peaceful use of outer space," regardless of the circumstances under which those war fighting capabilities might be used.<sup>23</sup>

Reaching agreement on the appropriate balance between reassurance, deterrence, and coercive prevention should be the first step towards developing basic principles to guide post-Cold War space and security policy. These agreed principles would in turn make it much easier for states to agree about which uses of space are peaceful and show due regard to the interests of other OST States Parties, and which are aggressive, intolerably threatening, or unacceptably reckless. The former would be deserving of legal protection (e.g. a right of safe passage), and the latter should be stopped through tighter regulations or, in the extreme, legitimate self-defense.

Current thinking about the guiding principles for space and security policy is best characterized as a poorly specified mix of deterrence and reassurance. Although the Obama administration has not yet formally adopted a new U.S. National Security Strategy, the Bush administration's second-term behavior did suggest a greater appreciation for the inherent difficulties of coercive prevention, not least of which is legitimating such actions in any but the most extreme situations. Meanwhile, the Russian and Chinese approaches to space security still seek to stabilize deterrence, but in a post-Cold War context in which the United States has vastly superior conventional capabilities and is vigorously trying to deploy missile defenses. The more that deterrence characterizes relationships among major powers, the more important it will be to continue protecting stabilizing uses of space for early warning, arms control verification, crisis communications, and escalation control.

The European Code of Conduct seeks primarily voluntary reassurance that the space environment can be managed sustainably as the number of space users and importance of space activities increases over time. The United States has clearly indicated that it wants reassurance from other countries, both that emerging space powers will be "responsible stakeholders" and that potential adversaries will not use space for asymmetrical attacks. It remains to be seen, though, how far the Obama administration will be willing to go in order to provide other countries with reciprocal reassurance about how it intends to act as the world's dominant space power.

Another major weakness of the OST that needs to be supplemented is the lack of formal multilateral decision-making and compliance management mechanisms. The less clear-cut a treaty's rules are, the more important it is to have some built-in way for parties to discuss, and reach agreement about, how to apply broad, ambiguous, or conflicting rules to specific cases. Moreover, the greater the likelihood of compliance disputes, either because a treaty's rules do not lend themselves to decisive monitoring by national technical means

---

<sup>22</sup> Michael Byers, *War Law*, (NY: Grove Press, 2005), esp. pp. 79-81.

<sup>23</sup> Statement by H.E. Mr. Li Changhe, Chinese Ambassador for Disarmament Affairs, Conference on Disarmament, March 12, 1998, <http://www.nti.org/db/china/engdocs/lich0398.htm>.