

A SPACE-BASED WEAPONS BAN: REGULATION BY INTERNATIONAL TREATY

I. Treaty Format

A. General Arms Control Treaties

The concept of general and complete disarmament was a leitmotiv to emerge during the Cold War. With the realization that this goal would not be achieved, a more modest methodology was adopted by the international community. Thus multilateral or bilateral accords have been promulgated to proscribe, ameliorate or otherwise control military activities with more specificity.

Arms control agreements are of a specific character, as they encroach upon a state's sovereignty. The rationale behind those agreements is mutual self-interest and the maintenance of a balance of power. Arms control agreements are also international law. As such these international obligations are subject to the basic rule *pacta sunt servanda*. This customary rule of international law means that treaties, once in force, are binding upon the parties to it and must be performed by them in good faith.⁶⁵

Arms control agreements speak of "undertakings to prohibit, to prevent, and not to carry out" a certain type of activity. As part of international law, arms control treaties share its vulnerability, in that they usually lack any real enforcement procedure.

Compliance with arms control agreements is based on the concept of national self-interest. The more balanced and equal an arms control agreement is the more likely it will be complied with. In fact, problems in treaty compliance usually arise from either changes in national regimes which can produce a re-evaluation of national goals, and from repeated minor violations of treaty obligations, thus eroding the treaty.

The concept of self-interest can also be found in the abrogation clauses to many arms control agreements.

Arms control agreements can be subject to Agreed Statements, Common Understandings and Unilateral Statements which are largely interpretative declarations. Though reservations can also be made to international treaties, they are rare in arms control agreements, and tend to clarify not quantify.

B. A Comprehensive Space Treaty

Arguments for a comprehensive space treaty governing all uses of outer space usually rely on existing experiences in codification. Of particular importance is the Convention of the Law of the Sea, where the UN established an all-embracing legal regime for the oceans in a single document.⁶⁶ The proponents of such an approach to space law-making argue that it will result in a

⁶⁵ Vienna Convention on the Law of Treaties, Art. 26.

⁶⁶ UN Doc. A/Conf.62/122 (1982)