Open-Ended Working Group on “Reducing space threats through norms, rules and principles of responsible behaviours”

Topic 5: Voluntary mechanisms and regimes applicable to outer space

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Thank you for the invitation. We are grateful for the opportunity to contribute to these discussions. Under the broader subject of voluntary mechanisms, I was asked to discuss “How agreed transparency and confidence-building measures (TCBMs) can be better applied to address threats arising from State behaviours with respect to outer space?” The first part of my presentation will highlight the significance of TCBMs for this OEWG. The second part will propose steps to effectively utilize TCBMs to address space threats.

I. Significance of TCBMs

Distinguished delegates and representatives, TCBMs have been referred to several times in discussions over the last week. These are tools to facilitate information-sharing and communication. They can lower risks of misunderstanding, miscalculation and possible escalation and notably, are voluntary measures. This means they can be tailored to meet various preferences. They can be precursors to advancements in space security governance, and lay the foundation for non-binding measures and legally-binding treaties. They are not limited to multilateral, bilateral or even regional forms, but include unilateral measures as well.

TCBMs are especially useful because they can help stakeholders arrive at shared end-goals for space security. While states may agree on the need for measures on space security governance, there are different elements being articulated. For instance: conflict-prevention, mitigating impacts of a conflict or restraining arms-racing behaviours. These goals are similar, but clearly, they focus on different elements.

TCBMs can help understand and communicate these differences, and allow states to arrive at a shared outcome. Importantly, TCBMs are behaviour-oriented, and align with the approach of this OEWG and Resolutions 75/36 and 76/231.

The 2013 GGE report on TCBMs are a comprehensive source on measures for space security. The report provided definitions, categories, and listed criteria to test implementation of measures. Many of the proposed measures have potential to address space threats. Some of the
TCBMs are: sharing information on space objects and orbital events, information on uncontrolled reentry of space objects, enhancing registration practices, forecasts for natural hazards and space weather, information-exchange.

However, these measures were not only proposed in the 2013 GGE Report, but also appeared as guidelines in the ‘Guidelines for the Long-term Sustainability of Outer Space Activities’ – an instrument which was adopted by consensus, in 2019. This demonstrates the apprehensions around these measures perceived as “TCBMs”, which have resulted in reluctance to act.

I will address these concerns today. TCBMs are not an end in and of themselves, but simply a means of progressing discussions. Adoption of such measures are not an indication of a preference for the form of an instrument, but they can build foundations for norms and treaties. Indeed, if we seek to achieve consensus on a treaty, then collectively adopting voluntary measures can bring us to that point.

Next, the concern that transparency exposes states and renders them vulnerable to adversaries – while this concern is understandable, it is important to note that based on the type of information, in many instances, there may already be partial open-source data about states’ activities, policies or expenditure. By sharing information on their own, states have the opportunity to accurately inform discussions, instead of reference to piecemeal information which results in factually incorrect views and misdirected discussions in multilateral and national fora.

Furthermore, states also stand to individually benefit from implementing TCBMs. Many measures can support growth of a state’s national space sector. For eg. information-sharing on national policies, strategies, military spending on space and space security activities. Disclosing such data can prevent wasteful expenditure and unnecessary acquisitions, instead ensuring adequate resource allocation that aligns with national priorities. Furthermore, there are several different types of space activities and ambitions, which may involve different departments of a state. Therefore, sharing information on policies, activities and expenditure can help facilitate coordination across different departments, resulting in a singular, coherent position. Transparency, particularly information-sharing in this manner, can contribute towards both national and international space security – it is not necessary that these two are mutually exclusive.

For these reasons, states are urged to consider the benefits of TCBMs, especially benefits of enhanced transparency.

II. Steps to effectively utilize TCBMs to address space threats:
1. The need to correct narrative/framing: I must emphasize that TCBMs are also unilateral. There is a misleading dominant narrative that TCBMs can only be adopted on a multilateral or bilateral basis. This narrative is subconsciously reflected in current documents and framing. The use of “information-exchange” indicates an external expectation – one that is based in some form of reciprocity – for another state or states to participate. We must rethink and correct this framing to identify what data can be categorized as “information-sharing” (types of data that can be unilaterally disclosed), and data that can be categorized as “information-exchange”. To some extent, states do share information on a unilateral basis (through space policies, white papers or strategies). We need widespread engagement to expand the level of participation in these practices and consider the types of information that can be disclosed.

2. Multilateral, regional or bilateral information-exchange: We must focus on existing mechanisms in the space treaties. As this week’s discussions have indicated, the international space treaties, particularly the OST, contain provisions for information-exchange. What is lacking is not mechanisms, but common understanding and interpretation. For example, previously-agreed TCBMs proposed use of consultation mechanisms, including those prescribed by Article IX of the OST. However, in the absence of shared understanding of the terminology and thresholds of Article IX, it is unlikely to be used. There are similar differences regarding registration practices, (if registration occurs at all).

To advance TCBMs for space security, States are urged to reaffirm commitments to principles in the treaties, then identify the legal gaps (especially noting state practice). This will allow us to use existing mechanisms to improve accountability. The MILAMOS and WOOMERA manuals can aid this process. MILAMOS is the manual providing the lex lata or “the law as it is”, for peacetime. WOOMERA clarifies law on use of force and IHL from the perspective of conflict prevention. These manuals provide the basis for transparency and confidence-building, by helping arrive at a shared understanding of existing legal principles.

3. Assessing previously-agreed measures and considering further steps where necessary: We must conduct an assessment of previously-agreed measures in light of threats today. It is important to identify whether these measures need enhancement, and if there are voluntary means to do so while future solutions are deliberated. For example, previous recommendations to submit notifications for intentional orbital break-ups. Certainly, notifications are a useful tool and statements can convey a state’s intentions behind a test. However, since the 2013 GGE Report on TCBMs and adoption of the LST Guidelines, not one, but two destructive ASAT tests have been conducted. Another example exhibiting
The need for new TCBMs is non-consensual/uncoordinated rendezvous and proximity operations (RPOs). I raise these examples to exhibit that there is potential to arrive at an agreement on certain behaviours where TCBMs can bridge the pathway to long-term solutions.

4. Finally, exploring new TCBMs: Space Situational Awareness (SSA) is a promising avenue for cooperation and transparency. It is advisable to consider a mechanism for shared SSA data to provide collective access to orbital data for transparency. If data can be collected and verified by more than one source, this can help assuage concerns that reports of space activities are biased or inaccurate. In this process, we could consider a mechanism that engages different stakeholders in collection and dissemination of varying sources of data. Non-state actors have great potential to valuably contribute to creating such a mechanism. Engagement of different stakeholders including industry and civil society, is an opportunity to utilize available technical expertise to support creation and implementation of such measures. There have been concerns about how to include these actors in discussions, yet these entities possess unique understanding of the technologies and can provide nuanced analysis of legal, commercial and policy implications. TCBMs therefore provide a medium to adopt an interdisciplinary, inclusive and multi-stakeholder approach to address space threats.

In conclusion, TCBMs are flexible, voluntary measures and provide us with an opportunity to support the behavioural approach of this OEWG. These measures do not indicate a preference for the form of an instrument, but provide us with the vehicle to achieve progress in the discussions. In doing so, we must seek to improve the use of existing mechanisms in the space treaties and arrive at a shared understanding of the terminology and thresholds in the provisions. Furthermore, while efforts are dedicated towards multilateral mechanisms for collective reporting, data-sharing and communication, states should simultaneously utilize unilateral nature of TCBMs. Measures do not need to be external or reciprocity-based. States can engage more in national information-sharing and utilize the opportunity to set an example and engage in best practices. We must acknowledge the benefits that such measures can bring to states, even on an individual basis. TCBMs can significantly support growth of domestic and commercial space sectors. Finally, by undertaking a collaborative approach that focuses on behaviours, TCBMs can act as interim steps that advance national and international space security governance. We need to spark collective movement towards transparency and confidence-building, if we want to achieve tangible progress.

Thank you.