

UNITED NATIONS
INSTITUTE
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**ENSURING ASIA–PACIFIC’S SECURE AND
SUSTAINABLE USE OF SPACE**
THE ROLE OF NORMS OF BEHAVIOUR

Facilitating the Process
for the Development of an
International Code of Conduct
for Outer Space Activities



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Asia–Pacific Regional Seminar and Outreach Initiatives: “Ensuring Asia–Pacific’s Secure and Sustainable Use of Space: The Role of Norms of Behaviour”

The Asia–Pacific region has, over the last few years, seen significant growth in the development of space-based infrastructure. As states of this region become increasingly dependent on these services, space security issues are also becoming increasingly relevant to states and their plans for investment in space technology.

Over the last few years, international policymakers have looked to the development of norms of behaviour to address growing space security issues that affect all actors in that domain. As outer space becomes increasingly congested and contested, initiatives have been launched in a number of multilateral fora to establish frameworks for voluntary “rules of the road” in order to give guidance to all actors in outer space regarding responsible behaviour. Such frameworks have the potential to increase security and stability in outer space for all actors and are particularly attractive to some because of their non-legally binding nature. There are several initiatives that have been the subject of much discussion among policymakers, including the United Nations Group of Governmental Experts (GGE) on transparency and confidence-building measures in outer space activities, the Working Group of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) Scientific and Technical Subcommittee on Long-Term Sustainability of Space Activities, and the European Union’s proposal for the development of an international code of conduct for outer space activities. For Asia–Pacific states, the establishment of norms represents an opportunity to mitigate many of the threats that they will be facing as their space programmes continue to mature.

As part of the ongoing project “Facilitating the Process for the Development of an International Code of Conduct for Outer Space Activities”, UNIDIR hosted a half-day regional seminar in the Asia–Pacific region—organized in cooperation with the Ministry of Foreign Affairs of the Government of Japan and in conjunction with the half-day Workshop on the Protection of the Space Environment—to provide a forum for key Asia–Pacific actors to explore the reasoning behind the development of norms of behaviour and to engage with regional partners on how such initiatives might be approached at the national, regional, and multilateral level. This seminar engaged high-level representatives from across the region, particularly representatives of members of the Association of Southeast Asian Nations (ASEAN) civil space community, notably those representatives who would be responsible for advising their ministries on how to approach negotiations related to the development of frameworks for norms of behaviour in outer space.

The central theme of the workshop focused on the key role that outer space plays in Asia–Pacific economic, social, and security advances and how it is, therefore, vital for states to engage collectively to find solutions for the preservation of long-term sustainability of outer space activities.

Panel I

The seminar was opened by Ben Baseley-Walker, Programme Lead for the UNIDIR Emerging Security Threats programme, who noted the growing threats in outer space and the need for a cooperative approach in addressing these risks. He stressed that this would be particularly important for the Asia–Pacific region, one of the fastest growing regions in the world in terms of space development.

Baseley-Walker chaired the first session of the seminar. The panel included:

Kazuto SUZUKI, Visiting Fellow, Princeton Institute for International and Regional Studies and Professor of International Politics at the Graduate School of Law at Hokkaido University, Japan.

Rajeswari RAJAGOPALAN, Senior Fellow, Observer Research Foundation, India.

Agnieszka LUKASZCZYK, Director, Brussels Office, Secure World Foundation, Belgium.

Eszter NEMETH, Head of Political Affairs, Press and Information, Delegation of the European Union to Malaysia.

During the first panel, speakers addressed the rationale behind norms of behaviour for outer space activities, including the need for norms, their relationship with transparency and confidence-building measures (TCBMs) and treaties, and the essential elements that should be included therein.

First, Kazuto Suzuki noted that, under outer space law, all states have equal rights to access outer space but that this leads to a “tragedy of the commons”, a case wherein the usefulness of common limited resources, such as orbits, are depleted by parties acting in their own self-interest. Unfortunately, this type of behaviour is detrimental to the long-term sustainability of all space activities. In particular, he pointed to the growing danger from space debris, a threat which has increased over the years because many practices involve placing objects in orbit but not their safe removal or de-orbiting. This behaviour has resulted in a growing threat to the integrity of functioning space assets from collisions with debris.

Suzuki noted that, while there are space law treaties to regulate space activities, it has been many years since any significant advances have been made to update the existing space legal regime. He pointed out that, in light of existing political hurdles to the development of a new treaty, it is worthwhile to consider the development of norms of behaviour as a crucial intermediary step for the preservation of safety and security in outer space. He concluded that it would be in the interest of all actors in space to adhere to norms of behaviour in order to preserve the long-term utility of the outer space domain.

Next, Rajeswari Rajagopalan addressed the issue of how norms of behaviour could support stability in outer space. She agreed with Kazuto Suzuki that the reluctance of states to develop or sign any new space law treaties indicates that interim steps in the form of TCBMs should be explored in order to address current space security issues and to increase the exchange of information among space actors. In particular, she recalled that some of the major space powers preferred TCBMs that do not contain verification mechanisms, due to a political climate that made the signing or ratifying of treaties much more difficult. She noted the usefulness of TCBMs as being easier to promote among domestic policymakers than a formal treaty, while acknowledging the concern that lack of verification mechanisms might lessen the overall effectiveness of TCBMs.

Rajagopalan considered the European Union’s proposed draft international code of conduct as a good example of a TCBM that could be extremely useful as an interim solution in light of the political hurdles facing the development of a treaty on outer space activities. She noted that the proposed draft represented a good starting point for consultations on a possible instrument. She reminded participants that it is important for the success of any norms of behaviour that there be a critical mass of states that adhere to the norms in order for the instrument to be effective. In this context, she stressed that it would be very important for the European Union’s proposed ad hoc diplomatic process for the development of an international code of conduct for outer space activities to be as inclusive as possible, thereby increasing the level of ownership felt by other states and, consequently, increasing the likelihood that any future code might be adhered to.

Next, Agnieszka Lukaszczyk discussed the legal implications of norms of behaviour for space activities. She stressed that while the adoption of norms does not create legal obligations, it still creates political and social obligations. She added that states adopting norms would only do so if the contents of the norms were in line with their political aims. She also stressed that while many agree that a treaty would be the best possible solution to existing space security issues, given existing political realities, norms of behaviour such as the European Union’s proposed draft international code of conduct was the next best option for helping to ensure security and stability in outer space. She concluded that multilateral approaches to space security are critical given the global nature of all human space activities and the manner in which the actions of one party can affect the entire space community.

Next, Eszter Nemeth, on behalf of the European Union, presented the intellectual foundations for the introduction of a draft international code of conduct for outer space activities—at this time the most advanced and developed of the multilateral initiatives for a framework for norms of behaviour. She highlighted the heightened risk of collisions in a space environment that has grown increasingly crowded, as well as the dangers of political tensions that could lead to conflict in space. She stated that the European Union felt that TCBMs could play a significant role in the strengthening of safety and security in space by establishing rules of the road that would help avoid collisions, as well as increasing transparency to avoid misunderstandings between states that could result in unintended consequences or even open conflict. She stressed that the initiative to develop an international code of conduct is intended to compliment other multilateral initiatives regarding stability in outer space.

Nemeth pointed out three principal benefits to the adoption of an international code of conduct. First, she noted that the draft code is intended to cover both military and civil space activities, a useful feature given the dual-use nature of space activities which has not, it is felt, been adequately addressed in existing space law instruments. Second, she noted that the draft code is intended to introduce preventative measures rather than reactionary ones, which would help ensure the integrity of orbits before they were rendered less useful by what might be considered irresponsible behaviour in space. Finally, Nemeth noted that a future code would be dynamic, capable of being amended to take into account ongoing developments in outer space.

Nemeth informed participants that the first meeting of the European Union's ad hoc diplomatic process would be held in Kyiv, Ukraine, and that the dates would be announced as soon as negotiations were concluded with Ukrainian partners. She reiterated that all United Nations Member States were invited to participate in these consultations and that the European Union welcomed any comments that states might have regarding the draft code. She concluded by stating that it is felt that an instrument like the proposed draft code would be extremely useful in ensuring that the Asia-Pacific region would be capable of fully realizing the potential of space-based benefits and services.

These presentations served as the basis for in-depth discussion among participants. It was enquired what the difference is between security, safety, and long-term sustainability in outer space. While it was agreed that there are no specific definitions, it was pointed out that "safety" refers to unintentional consequences in space, "security" pertains to intentional consequences, and "long-term sustainability" refers to ensuring safety and security over a long period of time. It was agreed that these terms are often misleading owing to language and cultural differences and that clarification of these definitions might help to put the context of norms of behaviour into perspective for many non-English-speaking states.

It was also asked what the purpose of developing a code of conduct is if there is no possibility for enforcement. To this end, a number of participants responded that there have been numerous instruments such as the code that have been adopted for disarmament purposes, and which have laid the foundations for more formal instruments to be developed in the future.

Panel II

The second panel was chaired by Nishinaga Tomofumi, Director of the Space Policy Division of the Japanese Ministry of Foreign Affairs. He seconded the view that outer space plays an increasingly critical role in the economic and social development of the Asia-Pacific region and it will, therefore, be necessary to take steps to ensure the stability of the space domain.

The panel featured a roundtable discussion with four panellists:

Libran N. CABACTULAN, Permanent Representative of the Philippines to the United Nations in New York.

Yungjin JUNG, Senior Researcher, Korea Aerospace Research Institute, Member and Legal Adviser of the delegation of the Republic of Korea to the United Nations COPUOS Legal Subcommittee.

Sean KELLY, Director, Defence, Strategy and Regional Security, International Security Division, Department of Foreign Affairs and Trade, Australian Government.

LI Juqian, Professor, China University of Political Science and Law (CUPL), Associate Dean of School of International Law of CUPL, Associate Director of International Law of CUPL, Standing Council Member of China Space Law Institute, and Standing Council Member of Beijing International Law Association.

The panellists presented their views on the need for norms of behaviour for space activities and on the importance of Asia-Pacific states participating in multilateral efforts to this end. There was consensus that, while it would be most desirable to have a formal treaty with verification and enforcement mechanisms, each of the speakers saw the usefulness in pursuing norms of behaviour, such as the European Union's proposed draft code, in order to develop guidance for responsible behaviour in outer space. It was suggested that without intermediary guidance, by the time a formal treaty could be achieved, the situation in the space domain may have already degraded to a level that rendered orbits unusable. While it was acknowledged that the proposed draft code was not perfect, it was felt that it is an adequate starting point for the development of a truly international code of conduct for outer space activities. It was also pointed out that the proposed ad hoc diplomatic process for the development of the code is intended to be inclusive of all United Nations Member States in order to develop an instrument that would be able to command wide-spread support among the international community. It was suggested that negotiations on a code should be pursued at both the regional and the national levels, giving states an opportunity to adopt proposed guidelines to their own domestic space programmes. Given that many Asia-Pacific states do not possess domestic space capabilities, instead looking to their neighbours for assistance in gaining entrance to the space markets, it is important that a cooperative regional approach be sought.

Participants expressed many of the same views that had been previously expressed in other fora. It was stressed that the European Union's proposed diplomatic process needs to be as inclusive as possible, that non-European Union states be given an opportunity to provide consequential input, and that there not be any time constraints on the development of a future code in order to allow meaningful discussion in a multilateral forum.

Outcomes

The Asia–Pacific regional seminar was a notable development in the ongoing dialogue regarding the development of norms of behaviour, particularly for the European Union’s initiative for a future code. Many of the voices that were heard throughout these conversations had previously held sceptical views regarding the European Union’s proposed diplomatic process but, during the seminar, they discussed norms in more positive terms. There was consensus that, while the proposal for a draft code is not perfect, it is a workable starting point and should, therefore, be elaborated upon through multilateral dialogue.

The development of norms was unanimously endorsed. Representatives from across the Asia–Pacific region, each coming from states with markedly different levels of economic and technological development, came together in the spirit of open discussion and were in agreement that, at present, a formal comprehensive treaty governing space activities is not realistically achievable in the current political environment but that norms of behaviour are an alternative solution that should be explored in order to make meaningful progress on the preservation and enhancement of outer space safety, security, and long-term sustainability of outer space activities.



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