

## **Relationship of Norms of Behaviour with TCBMs and Treaties, in particular the legal and political advantages and disadvantages of the different types of instruments**

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While there are several different instruments governing space security, it is important to look at TCBMs and treaties and how establishing norms of behavior could help strengthen the movement towards more binding, verifiable mechanisms. The reluctance to sign onto legally-binding instruments among countries as also to deal with disputes where there is too much distrust to have legal agreements have both led to support for TCBMs especially among Western powers.

### **Indian Stance on TCBMs**

The Indian position has been different. It does support TCBMs but only as good supplementary measures.

What do TCBMs do? They are simply means to strengthen dialogue and interactions while encouraging openness, greater transparency and information-sharing. These are voluntary measures that countries willingly opt to join and adopt and are usually not legally binding. And, if successful, TCBMs could promote higher level of openness and transparency significantly while beefing up confidence levels of states, alleviating tension and strengthening regional and global peace and stability. Once trust is established through such TCBMs, they could eventually lead to more binding legal commitments

### **Why do countries support TCBMs?**

TCBMs can become an intermediate step between a functional need and a binding instrument. Once a need for specific arms control measures are felt, TCBMs can be an early step to get all sides talking and build up confidence in each other on a particular issue area, which can eventually lead to more legal treaties and fundamental norms of behavior.

In the case of India, there have been different reactions to the utility of TCBMs: With Pakistan and China, India has been comfortable in TCBMs that have no verification. Take, for instance, the case of Nuclear TCBM exchanges. These have been bilateral, non-verification instruments such as the exchange of lists of nuclear facilities by India and Pakistan on January 1<sup>st</sup> of each year. This is part of the non-attack on nuclear facilities treaty between the two countries, but both sides are expected to trust the list of facilities that is given by the other side which are therefore included in the non-attack pledge. This list is not verified by either side.

However, when it comes to multilateral instruments, India has insisted on verification measures. Look at the Indian reaction to the Comprehensive Test Ban Treaty (CTBT), Fissile Material Cut-Off Treaty (FMCT), Biological Weapons

Treaty: India has insisted on very stringent verification measures in each of these treaties. But those are more formal treaties than TCBMs.

So Indian perspective on TCBMs has been that they are voluntary, self-regulating mechanisms and not multilaterally regulated, and verified. On the other hand, India believes that formal treaties need to be verified and regulated.

### **Advantages and Disadvantages of TCBMs**

There are some legal advantages to TCBMs. First, these are voluntary commitments and therefore easier to reach. Presumably, there is sufficient interest in both sides about the outlines of an agreement. Second, they are less complicated. It is far easier to reach an agreement on TCBMs because of this. There are no complications on what needs to be enforced and verified and there are no extended discussions of highly technical nature because these are more political agreements than legal ones. A formal treaty, on the other hand, would require extensive verification, as plenty of examples would indicate.

While these are clear advantages, the reality is that these frameworks and instruments work for some issues but cannot be equally applied to all. For instance, the Chemical Weapons Convention (CWC) works quite well though the verification measures are cumbersome, but if we are working on measures to prevent research into ASATs, that requires an even higher degree of monitoring.

So the question is if a measure is just a declaratory statement, what is the advantage?

One of the legal disadvantages is that because it is non-verifiable, it could be broken without penalties. However, it is easier to sell such agreements domestically when it is not a verifiable commitment. A second disadvantage may be that there is no way to know that countries are not undermining it. If countries violate, there is no way of knowing it. The only way to prevent from cheating it is deterrent. That is if you do it, others will do it. For instance, on the various TCBM measures between India and China, both sides know that if they cheat, the other side could so also. Therefore, both sides may have an incentive to abide by their agreement even if its not verifiable.

### **The Need for Norms**

So the bigger question is how do these theoretical notions help understand the problem of space security?

Ensuring space security and long-term sustainability of space has become more critical than ever. Ensuring freedom of action in space for all powers, ensuring that outer space does not get weaponized by moving beyond the phase of militarization, and ensuring that space continues to be used for peaceful and developmental purposes alone have become critical for the long-term sustenance of outer space. Lastly, a point about increasing number of actors. Even when countries are engaged in peaceful uses of outer space, the fact that there are more number of players involved in this business makes it a risky game, increasing the potential for accidents, collisions etc.

## **Means of Securing Space**

Therefore, the question is how do we secure outer space?

Ideally, we should try all measures – legally binding treaty mechanisms, adopt TCBMs, establish norms of responsible behavior, code of conduct. There are already different instruments and mechanisms in play – OST, UN-COPUOS, use of TCBMs, Group of Governmental Experts (GGE) on outer space. However, the difficulty in making progress towards legally-binding and verifiable mechanisms and the crisis in decision-making process and arriving at a consensus among major powers has meant non-realization of certain instruments in securing outer space.

On the other hand, threats to space security have become compelling factors for adopting TCBMs. Because of the difficulty in directly instituting arms control, for the present, TCBMs should be the focus.

## **The EU Code of Conduct**

The EU code of conduct is a good beginning towards developing TCBMs for space. It has many of the required essential elements. Nevertheless it has one major problem: the manner in which it was developed and the way in which it is being offered. It will be difficult to get support for an instrument that has been developed without sufficient consultation and without taking the needs of all interested parties into account.

Involving everyone is a big point precisely for the same reason that there is no sense of ownership of the EU code right now among non-EU space powers. This is an important point for consideration if we want to ensure greater participation from countries. Certainly, countries have shifted positions gradually in the recent months with the US taking the lead. The absence of an inclusive process can jeopardize some of these new initiatives. If something is going to be imposed from outside, it doesn't give those on which it is imposed any ownership and its unlikely that states will endorse such a code in great numbers.

On the other hand, we need certain rules of the road with regard to the activities in outer space. Activities in outer space cannot be kept hidden. Countries can do a lot of research in laboratories, but any testing will mean that secrecy will be difficult to maintain. That means that verification is not as serious an issue as in, say, nuclear weapons.

Meanwhile, we need to have a better grip of what are we trying to prohibit or restrain. The ABM Treaty, for instance, did not prohibit research but only deployment. So the point is why ban something when you don't have the capability to verify.

## **Case for Norms and TCBMs**

Having said that, I would argue for making earnest efforts in establishing norms of behavior and TCBMs. Given the increasing number of challenges – space

debris, arms race in space to greater potential for accidents and collisions – there is a need to regulate outer space activities. However, in the absence of a more binding mechanism, and with the current difficulties in reaching a consensus on the manner in which we address these issues, we need to get started somewhere. Looking into history, there are good examples of international cooperation, particularly in the nuclear domain. Even during the peak of the Cold War, there were solid arrangements between the US and the USSR like the hot line, exchange of information that maintained global peace and stability. Hence, one would make a strong case for TCBMs and other similar measures that would establish parameters of responsible behavior as good starting points. They certainly help in reducing some of the misperceptions and improving the confidence levels between states at bilateral, regional and global levels.

Similarly, building regional and multilateral initiatives on space situational awareness (SSA) is another measure to encourage openness while strengthening the efforts in securing outer space. Space is a limited commodity and states need to devise measures to protect it for future generations.