

SOME LEGAL ASPECTS OF CONFIDENCE-BUILDING MEASURES CONCERNING
OUTER SPACE

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Abstract

Confidence-building measures /CBMs/ played an important role in the past in the era of cold war. These measures are also important today.

Very important are CBMs in connection with outer space. Appropriate CBMs with respect to outer space activities are potentially important steps towards the prevention of an arms race in outer space and for ensuring the peaceful use of outer space.

CBMs in connection with outer space play also a role in relation to arms-control agreements, obligations arising from the UN Security Council decisions, etc. Satellites in outer space may confirm the fulfilment of arms-control obligations or observe various crisis areas. The fulfilment of obligations enhance confidence among states. On the other hand, CBMs such as coope-

rative monitoring may support verification measures. There is a close connection between CBMs and verification of arms-control agreements.

Nowadays, there is a certain basis for CBMs in various agreements concerning outer space and disarmament. But a further development is necessary.

General consideration of confidence-building measures

CBMs are increasingly accepted as an important element in reducing suspicion and tension between nations and enhancing international peace and stability. Over the past three decades, states have initiated and adopted a number of bilateral and multilateral confidence-building measures.

CBMs have also played an increasing role in the security planning of states. While initially limited to bilateral arrangements pertaining to strategic nuclear weapons, they have more recently found application

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in multilateral context relating to conventional military forces.

The United Nations system has given increasing attention to the potential contribution of CBMs to strengthening international peace and stability. The positive experience that has emerged in a bilateral context and in certain regions has formed a basis for potential extension of this process to other areas and subjects.

The General Assembly noted in paragraph 93 of the Final Document of the First Special Session devoted to disarmament in June 1978 that "in order to facilitate the process of disarmament it is necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among states. Commitment to confidence-building measures could significantly contribute to preparing for further progress in disarmament"./1/

The General Assembly also considered CBMs in other resolutions in later years.

CBMs have primarily political and psychological effects and although closely related, cannot always be considered as arms limitation measures by themselves in the sense of limiting or reducing armed forces. Improved confidence, however can have a positive impact on the subjective estimation of the intentions and expectations of other states.

CBMs can contribute to progress in concrete disarmament and arms limitation agreements. They can supplement disarmament and arms limitation agreements and thus may become an important way for progress in reducing international tensions. In the context of disarmament and arms limitation negotiations, such measures form part of an agreement

itself, facilitating implementation and verification provisions. But CBMs cannot substitute for concrete progress in limiting and reducing armaments. In the face of unconstrained increases in the number of weapons or of continued improvements in the capabilities of weapons the distrust and apprehension that is created will outweigh the contribution of CBMs.

CBMs seek to reduce misperceptions and misunderstanding, as a first step towards replacing suspicion with confidence by enabling the parties to be more transparent about their intentions in specific circumstances. "In crisis situations or in post-conflict contexts, the ability of all parties to have accurate, timely information so that threatening actions can be avoided, or early warning of impending danger, may be central to the successful resolution of the dispute in question"./2/

The general goal of CBMs is to reduce or even eliminate the causes of mistrust, fear and tension between nations, and to enhance international peace and stability.

Another goal is to reinforce the existing confidence between states. It includes a wide spectrum of activities implemented among states in the political, legal, military, economic, social and cultural fields./3/

Relation between CBMs and verification

We can define verification as a process which establishes whether states parties are complying with their obligations under an agreement. The traditional concept of verifi-

cation is in the context of arms limitation and disarmament agreements which is carried out by the states parties or international bodies.

The process of verification consists of multiple steps which include collection of information relevant to obligations under arms limitation and disarmament agreements, analysis of the information and reaching a judgement as to whether the specific terms of an agreement are being met./4/

Verification is the process based on international treaty or other legally binding documents /Security Council decisions /. Compliance with the obligations of states strengthens confidence among them. In this connection "the primary aim of verification is to increase the level of transparency in relation to relevant activities"/5/

On the other hand, verification needs some degree of confidence among states. The states were not willing to accept more intrusive verification measures such as inspection in the era of cold war. The verification of arms control agreements were based especially on national technical means in outer space. The best example is the ABM treaty of 1972 or SALT I treaty of 1972.

The CBMs have primarily political and psychological effects. They are based especially on political documents e.g. the Stockholm Document of 1986. Sometimes the basis for CBMs is also an international treaty e.g. Treaty on open skies of 1992. This Treaty shows a close connection between CBMs and arms control. The purpose of this Treaty is inter alia, "to improve openness and transparency, to facilitate the monitoring of compliance with existing or future arms control agreements and to strengthen the capacity for conflict prevention

and crisis management"./6/

There is also a close connection between verification and CBMs from the point of view of methods and technics. Some methods, technics and measures of CBMs are similar to the measures and technics of verification. For example inspections, information, consultations, observation etc. But there are other measures of the CBMs such as advance notice of military manoeuvres, exchange programs including those of scholars etc./7/ These measures are special for CBMs.

Confidence-building measures concerning outer space

The CBMs concerning outer space may play an important role in outer space itself but also in connection with the Earth. Very often activity in this connection is the observation of the Earth from outer space.

There is a freedom of outer space. All states have the right to explore and use outer space. Therefore observation from outer space by satellites for military or non-military purpose is not prohibited. Satellites are very suitable as one of the CBMs. "The historical development shows us that at least U.S.A. and U.S.S.R. have recognized the observation from outer space as a confidence-building measure from 1972"./8/ Satellites for commercial purposes and also national technical means may serve as CBMs. For example, monitoring efforts in Iraq pursuant to Security Council resolution 687/1991/, and relevant IAEA activities in relation to the Democratic People's Republic of Korea./9/

CBMs in outer space serve to

monitor the compliance of disarmament and arms limitation treaties.

As for outer space itself the potential importance of CBMs in outer space derives both from concerns over emerging trends in space activities, as well as from the need to prevent an arms race in outer space./10/

The legal basis for CBMs is included in various relevant outer space treaties.

The Outer Space Treaty of 1967 gives the states parties opportunity to observe the flight of space objects /art.X/. This Treaty provides on-site inspection on the Moon and other Celestial Bodies /art.XII/, consultations if an activity is potentially harmful to those of others /art.IX/. The state parties have an obligation to inform the United Nations Secretary-General of the nature, conduct, locations and results of their activities in outer space. The Secretary-General should be prepared to disseminate such information immediately and effectively /art.XI/.

The Registration Convention of 1975 established a framework for reporting to the United Nations Secretary-General information regarding the name of launching state, appropriate designator, date and location of the launching of objects in space, basic orbital parameters, general function, changes in orbital parameters after launch, recovery data of spacecraft /art.IV/.

The Hot Line Agreement of 1971 between U.S.A. and U.S.S.R. provides for the establishment of a satellite communication system to increase reliability of the Direct Communication Link.

Many U.S.A. - U.S.S.R./Russia/ treaties provide for verification by national technical means /NTMs/.

For instance the ABM Agreement

of 1972 provides for verification measures by national technical means /art.12 para 1/ and establish the principle of non-interference with NTMs /art.12 para.2/. The concept of non-interference with NTMs is important since NTMs include ground and space-based systems. This concept also implicitly includes the protection of such space-based systems as reconnaissance satellites /art.12 para.3/ against any form of interference. Legitimacy was given by the parties to the Treaty to their satellite activities for monitoring arms limitation and disarmament agreements. Moreover, in order to promote the objectives and implementation of the provisions of the Treaty a Standing Consultative Commission is established /art.13/. Within the framework of this Commission the state parties consider questions concerning compliance with the obligations, provide on voluntary basis such information as either party considers necessary to assure confidence in compliance with the obligations assumed, etc./11/

Other bilateral U.S.A. and U.S.S.R. treaties include similar provisions, e.g. SALT I of 1972, SALT II of 1979, INF Treaty of 1987, START I of 1991, START II of 1993.

Besides NTMs also remote-sensing satellites may be used for monitoring purposes and for enhancing confidence among states. The remote sensing of the Earth from space is based on the United Nations General Assembly resolution 41/65 of 1986 containing Principles Relating to Remote Sensing of the Earth from Space. These Principles provide inter alia, that "remote sensing activities shall not be conducted in a manner detrimental to the legitimate rights and interests of sensed State "/Principle IV/. State carrying out a

a programme of remote sensing shall inform the Secretary-general of the United Nations and shall "make available any other relevant information to the greatest extent feasible and practicable to any other State, particularly any developing country that is affected by the programme, at its request"./Principle IX/.

NTMs and satellites generally are very important CBMs and verification technics. The problem with NTMs and observation satellites is that only limited number of states possess such means. For this reason and in the absence of an international satellite monitoring agency, the group of experts suggested in 1990 that Member States of the United Nations operating observation satellites could undertake to provide their services, including possible access to their imagery./12/

As for institutional framework, there are various proposals concerning CBMs in connection with outer space. For instance in 1989, France proposed the creation of a Satellite Image-Processing Agency which would constitute the initial phase of an international institution for satellite monitoring. The French initiative clearly stated that the proposed agency "would be a confidence-building device and would not be intended to be the embryo of a verification system with universal competence attached to the United Nations". This Agency is to be understood as an agency to be created within the framework of confidence-building measures. It would be designed as a low-cost agency with three objectives. The first of these would be to collect and process data obtained from existing civilian satellites, and then to disseminate that material to the Agency's members. Its second objective would be to serve as a

research unit or centre charged with /a/ identifying groups of satellites which could contribute to the implementation of multilateral programmes, and /b/ designing various linkage agreements. The third objective would be to train national personnel to interpret space images and ascertain the extent to which the monitoring and verification of arms limitation and disarmament could be performed by means of satellites./13/

Conclusion

The United Nations should play an important role in further consideration and possible elaboration of specific confidence-building measures in the context of the prevention of an arms race in outer space and also in connection with security and disarmament generally.

The earlier proposal concerning the International Satellite Monitoring Agency should be re-examined. The possibility of establishing an international registry of orbital and functional data on vehicles and missions, which would receive submissions from tracking centres of Member States could be considered. This question deserves further consideration in view of its potential relevance to confidence-building.

The institutional mechanisms to encourage international cooperation among states in respect of space technology, including international transfer, should be also evaluated, taking into account the legitimate concerns about dual-purpose /civil and military/ technology. All states would have access to space for peaceful

purposes on a cost-recoverable or reasonable commercial basis. States that need assistance in this respect could use appropriate forms of technical cooperation, which would take into account the needs of the developing countries and countries in transition.

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