

UNGA Resolution 70/27 'No First Placement of Weapons in Space'

A Positive Contribution to Prevent an Arms Race in Outer Space?

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Abstract

On 7 December 2015 the United Nations General Assembly (UNGA) adopted with a vote of 126 in favor, 4 against, and 46 abstentions, Resolution 70/27 on 'No first placement of weapons in space.' The adoption of Resolution 70/27, which has received limited attention in academic circles, represents, instead, an important development for at least three reasons. First, it indicates the growing recognition of the positive role that transparency and confidence-building measures (TCBMs) play in preventing an arms race in space (PAROS), even from the perspective of those States that has suggested the adoption of a treaty on PAROS. Second, it shows the willingness of a crescent number of members of the United Nations General Assembly to engage in initiatives aimed at promoting a more secure space environment. Third, its controversial reception proves that a universal solution to the issue of space security still lays far ahead, as States maintain substantially different views on the approach and methods to be used.

In the light of the above the purpose of this paper is to analyze the content Resolution 70/27, evaluate its positive features and shortcomings, and assess its chances to provide a meaningful contribution to a more secure outer space.

1. Introduction

On 7 December 2015 the United Nations General Assembly (UNGA) adopted with a vote of 126 in favor, 4 against, and 46 abstentions, Resolution 70/27 entitled 'No first placement of weapons in space.' The adoption of Resolution 70/27, which follows the adoption of Resolution 69/32¹ in December 2014, has been surprisingly overlooked in academic

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1 Resolution 69/32 of 2 December 2014 'No first placement of weapons in outer space.'

circles.² While the Resolution undoubtedly presents some shortcomings, its adoption marks a significant development for at least three reasons. First, it indicates the growing recognition of the fundamental role to be played by transparency and confidence-building measures (TCBMs) in preventing an arms race in space (PAROS). Second, it introduces a new way to approach the PAROS issue, according to which rather than seeking a comprehensive solution to it States focus on a selected problem. Third, its controversial reception proves that a universally acceptable solution to the prevention of weaponization of outer space still lays far ahead.

In the light of the above the purpose of this paper is to analyze the content of Resolution 70/27, evaluate its positive and negative features, and assess its chances to provide a meaningful contribution to a more secure outer space environment.

2. Prevention of an Arms Race in Outer Space and Role of the United Nations General Assembly

Recent years have witnessed an increasing interest towards the prevention of an arms race in outer space. Several elements have contributed to this trend, such as: 1) advancements in anti-satellite (ASAT) technology;³ 2) the growing dependence on satellites from a civil and military perspective; 3) the vulnerability of satellites; 4) the testing of destructive, debris-generating, ASAT devices by China and the United States⁴; 5) the need to guarantee the security of space objects.⁵

2 Resolution 70/27 mirrors verbatim Resolution 69/32 both in terms of its core provisions and title.

3 For a description of the different kind of ASAT weapons see Greco L, A history of anti-satellite programs, Union of Concerned Scientists, January 2012, available at http://www.ucsusa.org/assets/documents/nwgs/a-history-of-ASAT-programs_lo-res.pdf [last accessed 7.9.2016].

4 On 11 January, 2007, China destroyed its aging FY-1C polar orbit satellite, located at an altitude of 865 km, by using a kinetic kill vehicle launched from Xichang Satellite Launch Center. On 21 February, 2008, the United States destroyed a malfunctioning US satellite, the, by means of a modified, SM-3 missile fired from the warship Lake Erie.

5 For instance, the United States released a National Security Space Strategy in 2011 which describes the space environment as congested, contested and competitive. Accordingly, the Department of Defence is tasked, inter alia, with the goal to “deter the development, testing, and employment of counterspace systems and prevent and deter aggression against space systems and supporting infrastructure that support U.S. national security.” In December 2015 China’s People’s Liberation Army (PLA) inaugurated the new organ of its rebranded PLA Rocket Force, the PLA Strategic Support Force. The PLA Strategic Support Force is supposed to give support to the combat operations so that the PLA can gain regional advantages in the astronautic war, space war, network war and electromagnetic space war, see at

Due also to the limits of the existing international legal framework to prevent an arms race in outer space, the international community has undertaken efforts to halt this possibility. Such efforts, however, have not led to a solution acceptable and agreeable by the whole international community. At the bottom of the problem lie political reasons and differences in the interpretation of key concepts, such as ‘weaponization’ of outer space, and the methods to be used.

On one side, a group of States led by China and Russia proposes a restrictive interpretation of ‘weaponization’, that is one exclusively focused on events occurring *in* outer space (i.e. the placement of weapons therein), and supports the adoption of a binding instrument, a treaty.⁶ Accordingly, in 2008 and 2014, China and Russia have put forward a proposal for a Draft Treaty on the Prevention of the Placement of Containing RCE Against Space Objects (PPWT). On the other side, a second group of States led by the European ones, favors a broader approach, namely one that includes also Earth-related events (i.e. the development and testing of ground-based ASAT technology) and considers the formulation of non-binding instruments the most viable option. In this respect, the European Union has sponsored an International Code of Conduct for Outer Space Activities.

Discussions on PAROS have mostly taken place within the UN Conference on Disarmament (CD), a body specialized in disarmament issues. While not being a forum specifically dedicated to discuss disarmament issues,⁷ the United Nations General Assembly has been dealing with the prevention of an arms race in space since the early 1980’s.⁸ As of 1981⁹, the UNGA has been

http://english.chinamil.com.cn/news-channels/pla-daily-commentary/2016-01/06/content_6846500.htm. (last accessed 7.9.2016).

- 6 For an analysis of the Chinese/Russian approach to the prevention of weaponization of outer space see Tronchetti F./Hao L. The 2014 updated Draft PPWT: hitting the spot or missing the mark? *Space Policy* 2015; 33: 38-49; Su J. The peaceful purpose principle in outer space and the Russia/China PPWT Proposal. *Space Policy* 2010; 28: 81-86.
- 7 The majority of the work on disarmament is conducted within the Conference on Disarmament (CD), the world’s only permanent multilateral disarmament treaty negotiating body. For more information see [http://www.unog.ch/80256EE600585943/\(httpPages\)/2D415EE45C5FAE07C12571800055232B?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/2D415EE45C5FAE07C12571800055232B?OpenDocument) [last accessed 7.9.2016]. For an analysis of the work undertaken by the CD on the prevention of weaponization of outer space see Hitchens T. Saving space: threats proliferation and mitigation. Research paper commissioned by the International Commission on Nuclear Non-Proliferation and Disarmament 2009, available at http://icnnd.org/Documents/Hitchens_Saving_Space.pdf (last accessed 7.9.2016); Tronchetti F. Ensuring the security of space objects by legal means: a feasible goal? *Asian Journal of Air and Space Law* 2011; 1 (1): 1-21.
- 8 Article 11 of the UN Charter authorizes the General Assembly to consider “the principles governing disarmament and the regulation of armaments,” and entitles it to make recommendations based on these principles. The General Assembly’s work

passing on an yearly basis resolutions stressing the need to consolidate the existing legal regime applicable to outer space,¹⁰ the risks that an arms race in outer space would pose to international peace and security, and the special role that States with major space capabilities have to actively promote the peaceful utilization of the space environment.¹¹ Since 2005, the UNGA has been also adopting resolutions on Transparency and Confidence-Building Measures (TCBMs) in outer space activities which point out the contribution to be given by such measures to prevent military confrontation in space.¹² Along this line the work of the Group of Governmental Experts (GGE) on Transparency and Confidence-Building Measures in Outer Space Activities is to be mentioned. The GGE issued a Report containing a series of measures aimed at reducing mistrust and misunderstanding in relation to States' intentions and activities of States in outer space.¹³

3. Resolution 70/27 'No First Placement of Weapons in Space

A United Nations General Assembly Resolution is a traditional recommendatory, non-binding, instrument. Despite not having mandatory status, it carries a notable political weight especially when adopted with the full support of the Assembly's members. When voting on a Resolution States

on disarmament is undertaken through one of its main committees, the First Committee on Disarmament and International Security. Once a Resolution is adopted in the First Committee is sent to the General Assembly for its formal adoption.

- 9 UNGA Res A/Res/36/97, part c, of 10 December 1981.
- 10 International space law, in particular Article IV of the 1967 Outer Space Treaty, explicitly prohibits the placing of nuclear weapons and weapons of mass destruction in orbit around the Earth and the testing and deployment of any kind of weapons on the Moon or other celestial bodies. However, no specific restrictions on the placement in orbit of conventional weapons and the transit of ballistic missiles carrying warheads through space is set. For an analysis of Article IV of the Outer Space Treaty see Schrogl KU, Neumann J. Article IV. In: Hobe S, Schmidt-Tedd B, Schrogl KU, editors. *Cologne Commentary on Space Law*, Vol. I, Cologne: Carl Heymanns Verlag; 2009, p. 70-93.
- 11 UNGA Res. 70/26 of 7 December 2015, Prevention of an Arms Race in Outer Space.
- 12 UNGA Res. 70/53 of 7 December 2015, Transparency and Confidence-Building Measures in Outer Space Activities.
- 13 The Group of Governmental Experts (GGE), was a group of experts from 15 countries, including the United States, Russia, and China, that was established in 2010 (UNGA Res. A/65/68 of 8th December 2010) to conduct a study on outer space transparency and confidence-building measures (TCBMs). The GGE finalized its report in 2013 (UNGA Doc. A/68/189 of 28 July 2013). The text of the GGE report is available at http://www.un.org/ga/search/view_doc.asp?symbol=A/68/189 [last accessed 7.9.2016].

may, however, choose either to oppose to it or abstain from voting.¹⁴ However, even in the presence of oppositions and abstentions the General Assembly may pass a Resolution if the majority of the delegations supports it. This is the case of Resolution 70/27 which has been adopted in spite of 4 oppositions and 46 abstentions.

Resolution 70/27 consists of a Preamble and six operative clauses. The Preamble repeats concepts that are usually included within UNGA documents on PAROS, such as the need for further measures to prevent an arms race in outer space and the importance of compliance with the existing legal regime providing for the peaceful use of outer space.

The core of the Resolution is contained in operational clause 5 whereby all States, are invited to consider the possibility of upholding as appropriate a political commitment not to be the first to place weapons in outer space. Notably, this clause does not oblige States to take any particular action or expressly demands them not to 'weaponize' outer space. Instead, it merely requests State to evaluate the option of making a pledge not to be the first to place weapons in space. In this respect, the Russian delegate has clearly indicated that main purpose of the Resolution is to stimulate dialogue and to create an environment that favour mutual understanding and trust.¹⁵ Importantly, some States, namely Russia and Cuba, have already publicly announced their decision not to be the first to place weapons in space.

Another characteristic of Resolution 70/27 is its connection with the Draft Treaty on the Prevention of the Placement of Weapons in Space, the Threat or Use of Force Against Space Objects (PPWT)¹⁶ Such a connection not only derives from the fact that the promoters of the two initiatives are the same but also from the fact that Resolution 70/27 urges States to engage in substantive work on the Draft PPWT and elaborates upon one of the key provisions of the Draft PPWT. The Draft PPWT is based on two provisions, one requiring States Parties not to threaten or to use force against space objects, the other obliging them not to place weapons in outer space. The PPWT proposal has been opposed by the US and the

14 Abstaining from voting is a practice by means of which a State indicates its opposition to the content of a certain Resolution without the consequence of halting the law-making work within the General Assembly.

15 Statement by the Representative of the Russian Federation V. Yermakov to the First Committee of the UN General Assembly, 30 October 2014. See also the statements by the Representatives of India and Costa Rica.

16 The Draft PPWT was originally submitted by China and Russia to the Conference on Disarmament 28 February 2008. An updated version of the Draft was presented on 10 June 2014. The text of the Draft PPWT is available at <http://reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/documents/PPWT2014.pdf> [last accessed 7.9.2016].

EU members,¹⁷ *inter alia* for the lack of verification mechanisms, the absence of restrictions on the development and testing of ground-based weapon, and the suggested definition of ‘space weapon’.¹⁸ Resolution 69/32 elaborates upon the Draft PPWT in the sense that, while the latter generally prohibits States Parties to place weapons in space, the former suggests States to pledge not to be *the first* (emphasis added) to do so.

4. Resolution 70/27 ‘No First Placement of Weapons in Space’: An Analysis

The analysis of Resolution 70/27 gives mixed results both of positive and less positive nature.

As a general remark one can argue that the promoters of the Resolution should be praised for their commitment to maintain the prevention of an arms race in space a relevant topic of discussion at international level. While PAROS has been discussed for decades within the UN little concrete results have been achieved and, at times, one is left to wonder whether these discussions should continue. Thus, any initiative that brings new energy and, possibly, new solutions on how to deal with the risk of an arms race in space should be commended.

On the positive side, Resolution 70/27 is an indication of the growing acceptance by States of the positive role to be played by transparency and confidence-building measures in the context of PAROS. It is particularly significant that the main sponsors of the Resolution have been China and Russia, as these two countries have been the strongest supporters of a hard law approach to PAROS in previous years. However, China and Russia have recently softened their position, as proved by their involvement in the work of the GGE on Transparency and Confidence-Building Measures in Outer Space Activities and the specific reference to these measures in the text of the Draft PPWT.¹⁹

Furthermore, Resolution 70/27 introduces an innovative method to deal with the PAROS issue. Indeed, while in the past UN-based documents have addressed it in a comprehensive and general manner, that is by attempting to

17 See the Statement by Dep. Ass. Secretary for Space and Defense Policy, Bureau of Arms Control, Verification and Compliance, Frank D. Rose (United States) at the Conference on Disarmament, June 10, 2014; Statement by Representative of Slovenia to the Conference on Disarmament on behalf of the European Union, June 10, 2014.

18 Article 1(b) of the 2014 Draft PPWT defines ‘space weapons’ as “means any outer space object or its component produced or converted to eliminate, damage or disrupt normal functioning of objects in outer space, on the Earth’s surface or in the air, as well as to eliminate population, components of biosphere important to human existence, or to inflict damage to them by using any principles of physics.”

19 Art. V, Draft PPWT 2014 states: “In order to enhance confidence in compliance with the provisions of this Treaty States Parties can implement on a voluntary basis agreed transparency and confidence-building measures.”

cover all aspects of it through provisions of a rather broad nature, the Resolution focuses on one specific side of it (the placement of weapons in space) and suggests an alternative way to cope with it (making a pledge not to be the first to place weapons in space). While this approach certainly does not offer a definite solution to the PAROS problem and lacks a formal binding value (a pledge is a commitment more than a formal obligation), it is a move in the right direction and might have a slowly, but progressive, impact in keeping balance in outer space. Indeed, if major space-faring States would make such a pledge the risk of the progressive weaponization of outer space would be lowered and recourse to ASAT devices would mostly have a defensive and responsive nature rather than preventive.²⁰

Additionally, Resolution 70/27 indicates a possible path towards reaching a multilateral deal on PAROS. Making a pledge not to be the first to place weapons in space could constitute the first step of this process; if a significant number of States would make such a pledge trust among them would increase and favorable conditions to achieve additional results in PAROS would be in place. States could, for example, make additional pledges related to other aspects of PAROS; the combination of several pledges could lead to customary rules and favor the codification of these rules into a formal, possibly binding, document.

Despite these positive characteristics, Resolution 70/27 presents some shortcomings. First of all, a definition of 'space weapon' is absent. While demanding States to possibly commit not to be the first to place 'weapons' in space, the Resolution does not indicate what a weapon is. Several delegations have stressed that this not only creates confusion on its scope but also compromises the significance and effectiveness of a similar commitment.²¹ It has been further pointed out that the lack of a uniform understanding of what constitutes a 'space weapon' the Resolution might have an opposite effect to the one that was foreseen: for example, a State may mistakenly deem that another State has placed weapons in space or may be encouraged to pre-

20 Generally on self-defence see Y. Dinstein, *War, aggression and self-defence*, Cambridge Univ. Press, 4th ed. (2005); T.M. Franck, *Recourse to force, state action against threats and armed attack*, Cambridge Univ. Press (2002). For an analysis of the applicability of the concept of self-defence in space see F. Tronchetti, The right of self-defence in outer space: an appraisal, 63 *German Journal of Air & Space Law* 92 (2104); C.M. Petras, The Debate Over the Weaponization of Space – A Military-Legal Conspectus, XXVIII *Annals Air & Sp. L.* 171 (2003).

21 Australian Deputy Permanent Representative Ian McConville: Explanation of vote on Draft Resolution L. 47, 'No first placement of weapons in outer space', New York City, 3 November 2015; Italian representative on behalf of the European Union, Explanation of vote delivered at the 69th Session of the United Nations First Committee: No first weapons in outer space, October 30, 2014.

emptively develop offensive space capabilities in order to be able to respond to the placement of weapons by another State.²²

One could argue that, because of the connection between the Resolution and the Draft PPWT, the definition of ‘space weapon’ included in the latter could be transposed in the former. While this exercise would be theoretically possible Resolution 70/27 never explicitly mentions such an option. Furthermore, several States have questioned the usefulness of the definition of ‘space weapon’ included in the Draft PPWT based on the argument that it fails to recognize that every object launched into outer space (not only those specifically designed to harm) can be potentially used as a weapon.²³ In this respect, the strong link between the two initiatives may make difficult for the States that have opposed one of them to support the other. Arguably, these States may view the Resolution as an instrument utilized by China and Russia to merely promote their own approach to PAROS.

Another criticism that has been addressed against the Resolution is the absence of mechanisms to verify compliance with its provisions.²⁴ In particular, the United States²⁵ has made reference to the criteria for evaluating space-related transparency and confidence-building measures (TCBMs) elaborated in the Group of Governmental Experts (GGE) Report of 2013. Accordingly, TCBMs for space should be clear, practical, and be able to be effectively confirmed by other parties in their application.²⁶ When applying these criteria to Resolution 70/27 the United States believes that it would not be possible to confirm that a State has not been the first to place a weapon in space.

Finally, certain delegations have criticized the Resolution for being silent on terrestrial-based anti-satellite weapons, a choice that might contribute, not reduce, mistrust and misunderstanding.²⁷

22 Italian Representative *supra* footnote 21.

23 For an analysis of the criticisms addressed to the 2014 Draft PPWT see Tronchetti/Hao, *supra* footnote 6; Listner M. The 2014 Draft PPWT: a new draft with the same and different problems. The Space Review (August 2014), available at <http://www.thespacereview.com/article/2575/1> [last accessed 7.9.2016].

24 United States Ambassador Robert A. Wood: Explanation of vote before the vote at the 69th UN General Assembly, First Committee on Draft Resolution L. 14, ‘No first placement of weapons in outer space’, New York City, October 30, 2014; Australian Deputy Permanent Representative *supra* footnote 21.

25 United States Ambassador Robert A. Wood: Explanation of vote before the vote at the 70th UN General Assembly, First Committee on Draft Resolution L. 47, ‘No first placement of weapons in outer space’, New York City, 3 November 2015.

26 Section III.C.34, Criteria for Transparency and Confidence-Building Measures in Outer Space Activities, Report of the Group of Governmental Experts Report on Transparency and Confidence-Building Measures in Outer Space Activities, 28 July 2013.

27 See the Statement by Australian Deputy Permanent Representative McConville, *supra* footnote 21; European Union Explanation of Vote Delivered by the Luxembourg

5. Concluding Remarks

As described, Resolution 70/27 can be praised for several reasons, including to have brought the PAROS issue back to the core of the General Assembly and have introduced a new, step-by-step, approach to PAROS, that may pave the way for future initiatives in the years to come.

However, due to the criticism that it has received, the ability of Resolution 70/27 to achieve its intended goal remains debatable. Indeed, it seems unlikely that the States that have not support it may decide to pledge not to be the first to place weapons in space. Considering the significant role that these States play in the exploration and use of outer space (particularly the United States and the EU Members), their failure to back the Resolution significantly harms its overall significance and (future) impact.

It is then up to its promoters, particularly Russia and China, to enhance the relevance Resolution 70/27 and to maximize the positive effect that its adoption has brought to the PAROS discussions. Failure to do so would create the risk of making its annual adoption by the General Assembly a mere diplomatic exercise with little practical impact. If China and Russia would decide to follow such a recommendation the choice made is the former then there would be several options to be considered. For example, China and Russia could formally announce their intention to pledge not to be the first to deploy weapons in space and invite other countries to join them. Such a move would have the benefit to show to the international community the seriousness of the 'No First Placement of Weapons' initiative as well as that its proponents. Furthermore, if a number of countries would positively answer the Chinese/Russian call, a certain level of diplomatic pressure would be put on those countries that refuse to do so to, at least, explain their position and possibly suggest alternative approaches. From a legal perspective, the sponsors of the 'No First Placement of Weapons' initiative could evaluate the following three possibilities to address some of the concerns expressed in relation to Resolution 69/32: 1) clarify the relation with the Draft PPWT; 2) insert a definition of 'space weapon'; 3) suggest States to make an additional pledge not to be the first to attack an object in space. As to the first point, while it is hard to imagine that any reference to the Draft PPWT would be deleted, the language of the Resolution might be slightly softened (for example, instead of 'urging States to start a substantive work on the Draft PPWT, the Resolution might instead read "recommending States to consider to engage in discussion on the Draft PPWT").

Inserting a definition of 'space weapon' would tackle one the main criticism raised against the Resolution on the No First Placement of Weapons in Space.

Presidency at the 70th Session of the United Nations First Committee, 'No first Placement of Weapons in Outer Space', 3 November 2015.

Even if States could oppose to the proposed definition, such a move could provide the foundation for further discussions on the matter.

Finally, China and Russia should encourage States to make an additional commitment to the one not to be the first to place weapons in space, namely a pledge not to be the first to intentionally attack a space object.²⁸ This system of parallel pledges could substantially neutralize a key objection raised against Resolution 70/27. Furthermore, it would significantly enhance the level of security in space, as States would ideally commit not to be the first to deploy weapons in outer space as well as not to be the first to attack space objects by any means (including by using objects not specifically constructed to harm).

The present viewpoint concludes with the hope that States will not miss the opportunity that the adoption of Resolution 70/27 has given to make progress in the prevention of an arms race in space.

28 Such a request could be either inserted in the Resolution on the No First Placement of Weapons in Space or in a separate, dedicated, Resolution.