Various Regulatory Mechanisms-Options

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Purpose of the presentation

- Description of various legal strategies for the implementation of the COPUOS Space Debris Mitigation Guidelines
- At international, regional and national levels
- Options for the guidance of states for the purpose of implementation
- Implementation -> giving effect to or applying to one's space hardware
- International and national

International level

- 1. Maintaining *status quo*
- Guidelines – considered relatively easy to adopt
- No legal status;
- The lowest form of international instrument/document
- States are not specifically required do anything; may just ignore them; may carry out space activities without paying any attention to them
- This is possible, because the Guidelines are expressly 'non-binding'; may be applied nationally on a 'voluntary basis'; no answerability; no required reporting mechanism;
- However, there may be 'soft' expectation by other states for the Guidelines' implementation.

International level (conti….)

- 2A. Code of Conduct
- Non-binding
- Could be drafted and proposed :
- (i) either by an academic or interest group; e.g. , like the Stimson Centre 2007 Model Code of Conduct for Responsible Space-Faring Nations
  - This is easy to do but might not attract any state action for implementation
- (ii) or through international organization , like the European Union. E, g. the 2008 EU Code of Conduct for Space Activities
  - This may be relatively difficult to adopt but could attract some state attention and action for implementation

International level (conti….)

- 2B. Code of Conduct, or 'Regime'
- Non-binding
- With regular meetings, reporting, 'some sort of secretariat'
- For example, 1987 Missile Technology Control Regime (MTCR)
- Required to be implemented nationally.
- Though internationally it carries no legal status,
- But becomes nationally binding when adopted through domestic law, e.g. MTCR implemented through export control legislation and/or regulations (e.g. the US Arms Control Act)
- Relatively more chances for implementation and adherence internationally because (a) membership generally limited to a small group of states and (b) some 'answerability' as non-implementation could prove 'politically' embarrassing.
- A good option for the Guidelines' implementation

International level (conti….)

- 3. Unanimously adopted UNGA Resolution containing 'mandatory' language like 'shall'
- Non-binding
- For example, the UNGA Resolutions relating to remote sensing (1986) and to nuclear power sources (1992)
- May be more difficult to negotiate and adopt than the 'Guidelines'
- Though legally speaking 'non-binding', but carry more 'political' and sometime even 'legal' weight, especially when considered to have become a part of customary international law; e.g. the 1963 UNGA resolution on space activities – 'instant' customary international law.
- States may ignore pleading a resolution's non-binding nature

International level (conti….)

- 4. Unilateral declarations
- Binding
- National action, with international legal implications
- When a state unilaterally declares and pledges to do or not to anything, that declaration could be internationally legally binding on that state. For example, in 1983, the Soviet Union made a unilateral declaration announcing its moratorium on anti-satellite testing.
- The Space Debris Guidelines could be unilaterally accepted by a state and others may follow.
- However, chances of such declarations are few.

International level (conti….)

- 5. Bilateral or regional treaty
- Binding in nature
- More difficult to negotiate than a UN resolution but easier than a multilateral (global) treaty
- For example, 1972 Anti-Ballistic Missile Treaty between the Soviet Union and the US.
- Firm commitments and, thus high chances of adherence and implementation
- The Space Debris Guidelines may be adopted as a regional treaty amongst the IADC members; and then opened for adherence by other states; like the 1963 Partial Test Ban Treaty
- More preferred option for the Guidelines' implementation

International level (conti….)

- 6A. Multilateral treaty
- Binding
- More difficult to negotiate than a bilateral or regional treaty
- For example, 1967 Outer Space Treaty containing legal principles, without implementation and without dispute settlement mechanism.
- Firm commitments and, thus high chances of adherence and implementation

International level (conti….)

- 6B. Multilateral treaty
- Containing legal principles and rules with implementation requirement and dispute settlement mechanism.
- Binding
- For example, the 2006 ITU Constitution and Convention, supplemented by detailed technical regulations – all being regularly revised and updated at intergovernmental technical conferences, applied by international civil servants
- Firm and precise commitments and, thus highest chances of adherence and implementation
- However, very difficult to negotiate
- This could be the ultimate goal in the case of space debris

International level (conti….)

- The first mechanism (*status quo*) not a sufficient option and the last one (multilateral treaty) may seem utopia at this stage
- All these options are not mutually exclusive
- Any combination may be adopted
- Normally, an internationally binding treaty ought to be 'implemented' domestically in order to make it applicable to national public and/or private entities
- Thus, depending upon constitutional system of each state, there may be a requirement of an appropriate national law and regulations

National level

- 1 A. *Status quo*

- The Guidelines being non-binding; states may just ignore them; nothing will change

- However, if COPUOS institutes some sort of reporting mechanism (regular discussions), some states may feel 'politically' pressured to implement them domestically.

National level (conti…)

- 2. States may issue national policy guidelines, directives or regulations incorporating the Guidelines, if allowed under their existing legislative system

- For example, under the 1986 UK Space Act (section 11.i) The Secretary of State may make regulations-
  - (a) prescribing anything required or authorised to be prescribed under this Act, and
  - (b) generally for carrying this Act into effect.

- Binding only nationally and/or to one's nationals operating internationally

National level (conti…)

- 3. States may adopt an Act/Law with specific provision(s) dealing with space debris mitigation or removal and then issue regulations incorporating the COPUOS Guidelines

- For example, under the 2005 Canada Remote Sensing Space Systems Act (section 7) an application to the Minister to issue, amend or renew a license must be supported by a proposed system disposal plan.
  - Under section 9.1, the Minister may not issue a license without having approved a system disposal plan
  - And under section 20.1, the Governor in Council (i.e. Federal Cabinet) may make regulations governing system disposal plan.

- Binding only nationally and/or to one's nationals operating internationally

Conclusions

- This is just a small list of regulatory mechanisms-options that are available to states which wish to implement the COPUOS Space Debris Guidelines.
- If political will exists to achieve the goal of mitigation of space debris, the necessary means or options are not in short supply.
- States should adopt an evolutionary approach, both at international and national levels.
- The Guidelines are a first, but a very small and extremely weak, step in the right direction. The second and even the third step must be taken urgently; i.e. incorporating them into national binding regulations and a regional treaty

Thank you for your attention!!!