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.
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!!!