

## **The 2010 U.S. National Space Policy and Its Potential for Upholding the Principles of the Outer Space Treaty Regime**

Remarks to 5<sup>th</sup> Eilene M. Galloway Symposium on Critical Issues in Space Law

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Luncheon Speech, December 2, 2010

I'd like to thank Joanne and Tanja for inviting me to be here today. Joanne asked that I look at President Obama's new National Space Policy from the standpoint of whether it has the potential of upholding the principles of the Outer Space Treaty regime and to have Eilene's perspectives in mind since she can only be here with us today in spirit and not in person.

I know she'd be pleased that the focus of this year's symposium is Article IX of the treaty – international cooperation and, if you will, responsible use of space. That could not be a more fitting theme in which to discuss the new Obama policy.

For those of you who don't know me, I want to make clear that I don't work for the Obama Administration and had no role in writing this policy. I'm an independent policy analyst and my views are my own. I do like the new policy though, as you will undoubtedly discern. I think, overall, Eilene would be pleased with it, too.

Article IX emphasizes that states parties shall conduct activities "with due regard to the corresponding interests of all other States Parties" and that is just what the Obama policy is all about. As it states in its Introduction,

"All nations have the right to use and explore space, but with this right also comes responsibility. The United States therefore calls

on all nations to work together to adopt approaches for responsible activity in space to preserve this right for the benefit of future generations."

The most striking feature of the Obama policy is this change in tone from the 2006 Bush policy. It is outward looking, inclusive of the international community, and conveys that the United States wants to work with like-minded countries to ensure space sustainability. The Bush policy was viewed as being highly nationalistic. Some even called it belligerent. It conveyed that the United States felt it had the high ground in space, planned to keep it, and while international cooperation was fine in some cases, the United States did not NEED any help.

Much has changed in the past four years.

It is not just the election of a new President with a different philosophy, but events in space and on Earth have had a profound impact on how the U.S. Government views space activities.

The Chinese antisatellite test against one of its own spacecraft in 2007 not only re-emphasized the vulnerability of satellites to direct attack, but the resulting debris imperils everyone's satellites. It led to condemnation more for the mess it made than for the militaristic implications of the test itself.

The unintentional collision of a U.S. commercial Iridium communications satellite (Iridium 33) and a defunct Russian Cosmos satellite (Cosmos 2251) in 2009 brought space debris and space situational awareness to the forefront of concern for everyone who operates satellites, both governments and commercial companies.

A third change was the financial collapse of 2008-2009 from which most countries are still recovering. That brought to the fore the realization that to achieve great things in space, the United States Government would need more partnerships, with other countries and with the private sector.

The Obama policy essentially shifts the focus towards building a global sense of responsibility for sustaining the space environment so all can use it, and for partnerships in using and exploring space.

And the partnerships are not only in civilian space activities. It applies to national security space as well. In May, just before the policy was released, Gen. James Cartwright, vice chairman of the Joint Chiefs of Staff, spoke at a CSIS meeting and made what I think were truly “game-changing” remarks that presaged what the new policy would say. It’s one of my favorite quotes, a bit long so I hope you’ll bear with me because I think it’s quite interesting. Here’s what Gen. Cartwright said:

“Reality is that we don’t fight alone, we don’t deter alone, we don’t assure alone. Everything is done in partnerships. Everything is in coalitions. ... We [think we] have to have the only capability; we have to fill every rung on the ladder with the best capability in the world. We can’t afford it, nor can we do it. There are other very capable nations out there very willing to partner up. We’ve got to make sure that our strategy is inclusive....You cannot afford to do everything yourself. We are not an island.”

So that is a major thrust of the new U.S. policy. Working together with like-minded countries in using space, and treating space as a global commons for which all are responsible. Just what Article IX is all about.

“Sustainability” has become the keyword and while it is not defined in the policy that means that it leaves room for all the stakeholders around the world to discuss what it is and what’s needed to achieve it. International experts could have as much influence on the implementation of these aspects of the policy as U.S. experts, and of course Europe deserves a lot of credit already for its draft Code of Conduct for Outer Space Activities. A revised draft of that code was released at the United Nations a few weeks ago and I see from the agenda that you will be hearing about it later today.

Space situational awareness is a key component of sustainability and of the Obama policy. It is right in keeping with Article IX – avoiding harmful contamination -- in this case contaminating Earth orbit with space debris. SSA can be defined in a number of ways, but at its core is enabling satellite operators to know what’s in orbit, where it is, and where it’s going in order to avoid collisions and the resulting debris that jeopardizes everyone’s space operations.

In fact, I think you can read the Obama policy side by side with the Outer Space Treaty and the other space treaties to which the U.S. is signatory and see many areas of conformity, far too many to discuss in a luncheon speech!

The only other aspect I will cover in these brief remarks is what the policy says about space weapons and the prospects for a space arms control regime. I know that is a topic of considerable interest to everyone here.

Preventing space from becoming a venue of war was one of Eilene's most cherished principles. I think she would view the Obama policy as an improvement over the Bush policy, even if it does not go as far as she might have hoped.

The Obama policy focuses on developing transparency and confidence building measures (TCBMs) to strengthen stability in space. But like the Bush policy, it stops short of agreeing to negotiate a space arms control treaty and reserves the U.S. right to exercise space control. Let me read you a couple of quotes from the Bush and Obama policies to highlight both the similarities and the differences.

The Bush policy said:

"The United States considers space systems to have the right of passage through, and operations in space, without interference. Consistent with this principle, the United States will view purposeful interference with its space systems as an infringement on its rights." (emphasis added)

The Obama policy makes the same point, but in a friendlier and more inclusive way:

"The United States considers the space systems of all nations to have the right of passage through, and conduct of operations in, space without interference. Purposeful interference with space systems, including supporting infrastructure, will be considered an infringement of a nation's rights." (emphasis added)

Same point, but inclusive.

Much has been made of the Obama Administration's willingness to discuss space arms control, unlike the Bush Administration's harsher stance. But there ARE caveats to the new policy.

The Obama policy says:

"The United States will pursue bilateral and multilateral transparency and confidence building measures to encourage responsible actions in, and the peaceful use of, space. The United States will consider proposals and concepts for arms control measures if they are equitable, effectively verifiable, and enhance the national security of the United States and its allies." (emphasis added)

So it is not a blank check. And it's not an agreement to negotiate a treaty. Frank Rose, Deputy Assistant Secretary of the State Department, told the U.N. Conference on Disarmament in July that the U.S. continues to support only "a non-negotiating, or discussion, mandate" with regard to a space arms control treaty. As he said, the U.S. seeks transparency and confidence building measures "to strengthen stability in space and to mitigate the risk of mishaps, misperceptions, and mistrust."

The United States also continues to reserve its right to develop and use space control measures if necessary.

The Bush policy said:

"The United States considers space capabilities ... vital to its national interests. Consistent with this policy, the United States will: preserve its rights, capabilities, and freedom of action in space; dissuade or deter others from either impeding those rights or developing capabilities intended to do so; take those actions necessary to protect its space capabilities; respond to interference; and deny, if necessary, adversaries the use of space capabilities hostile to U.S. interests."

The Obama policy says:

"The United States will ... consistent with the inherent right of self defense, deter others from interference and attack, defend our space systems and contribute to the defense of allied

space systems, and, if deterrence fails, defeat efforts to attack them.”

The Obama policy goes on to say that the Secretary of Defense shall:

“Develop capabilities, plans and options to deter, defend against, and, if necessary, defeat efforts to interfere with or attack U.S. or allied space systems.”

In this case, I don’t think the tone is different – don’t mess with our satellites – but it is more inclusive, bringing in our allies as well.

There undoubtedly are many who would argue – Eilene among them – that this is not in keeping with the principle of peaceful purposes. But in my view it’s an improvement over the Bush policy and a realistic stance for the United States to take especially considering the Chinese ASAT test – some call it a demonstration, not just a test. Meanwhile, the United States is working on TCBMs and discussing Europe’s draft Code of Conduct, both important steps towards ensuring that space remains a peaceful environment.

In summary, I believe the Obama policy goes a long way to embrace the principles of the Outer Space Treaty and particularly those that involve international cooperation and conducting activities with due regard for other countries’ interests.

International cooperation in space has, of course, been part of U.S. law and policy since the 1958 National Aeronautics and Space Act that created NASA, and its section 205 for which Eilene was largely responsible. In fact, one of the few criticisms I’ve heard in the U.S. of the Obama policy is that it goes too far in that regard – that it is not a policy to ensure U.S. leadership in space.

I don’t agree with that interpretation, but it’s an interesting viewpoint. The policy itself seems to have a message aimed outward to the global space community not to the American public. The word leadership does appear in the policy a number of times, but it is not the predominant theme.

This is U.S. national space policy, after all. It begins with a page and a half discussion of the benefits of the space program, which I know would have pleased Eilene since she believed that if people understood how important space is to their everyday lives they would support it more vigorously. It’s the first time I’ve seen such an extensive discussion of those benefits in a Presidential space policy, but even that part seems aimed broadly at the world, not just the United States.

I believe the President’s attempt to communicate with the American public was the statement he issued the day the policy was released. It talks about leadership in almost every paragraph. To be honest, even in space policy circles, I don’t know many who have read it, which is too bad. It’s quite uplifting. I’d like to end by reading the concluding passage from that statement. While it may be aimed at the U.S. public, hopefully it resonates in every space-faring country.

President Obama said:

“In short, this policy, while new, reflects the standards of leadership we have set since the dawn of the space age, and ideas as old as America itself. We do not fear the future, we embrace the future. Even in times of trial, we do not turn inward, we harness the ingenuity and talents of our people, we set bold goals for our nation, and we lead the world toward new frontiers. This is what has ensured our prosperity in the past. And that is what will ensure our prosperity in this new century as well.”

Eilene herself could have written those words.

Thank you and I'd be happy to try and answer any questions you have.