

In May 2010, Presidents Obama and Calderon committed to reaching an agreement to jointly develop reservoirs that were determined to be transboundary. Since that time, representatives from the U.S. Department of State, the U.S. Department of the Interior, and Mexico's Foreign Ministry and Ministry of Energy worked to negotiate an agreement that can be implemented while respecting each nation's legal framework.

The Transboundary Agreement sets clear guidelines for the development of oil and natural gas reservoirs that cross the maritime boundary. Under the Agreement U.S. companies and PEMEX will be able to voluntarily enter into agreements to jointly develop those reservoirs. In the event that consensus cannot be reached, the Transboundary Agreement establishes the process through which U.S. companies and PEMEX can individually develop the resources on each side of the border while protecting each nation's interests and resources.

The Transboundary Agreement also provides for joint inspection teams from the Bureau of Safety and Environmental Enforcement and the Mexican Government to ensure compliance with applicable laws and regulations. Relevant agencies on both sides of the boundary will review all plans for the development of transboundary reservoirs, and additional requirements may be set before development activities are allowed to begin.

After signing both countries will work through their domestic systems to bring the Agreement into force.⁵

United States to Join Negotiations on International Code of Conduct for Space Activities

In January 2012, Secretary of State Hillary Clinton announced that the United States will enter into negotiations with the European Union and others on an "International Code of Conduct for Outer Space Activities," addressing issues such as space congestion and debris.¹ The U.S. Department of Defense, which relies heavily on secure access to space for communications, navigation, intelligence gathering, and many other functions, endorsed this effort.²

The United States led in negotiating the 1967 Outer Space Treaty³ and other early space law instruments but in recent years has sometimes resisted space-related negotiations, viewing them as threats to U.S. freedom of action in pursuing U.S. security and other interests.⁴ U.S. policy has evolved,⁵ not least because the number of states and nonstate entities operating satellites has grown dramatically, as have the resulting risks of debris from satellite launches and failed satellites.⁶ (The U.S. Department of Defense tracks over 22,000 man-made space objects; many other pieces of space debris are too small to track.) Secretary Clinton's statement follows:

⁵ U.S. Dep't of Interior Press Release, *supra* note 3.

¹ Tejinder Singh, *U.S. Rushes to Endorse International Code of Conduct for Outer Space* (Feb. 8, 2012), at <http://www.wall-street.com/2012/02/08/u-s-rushes-to-endorse-international-code-of-conduct-for-outer-space/>.

² Lisa Daniel, *Defense, State Agree to Pursue Conduct Code for Outer Space* (Jan. 18, 2012), at http://www.defense.gov/home/features/2011/0111_nsss/docs/FINAL_DoD_Fact_Sheet_International_Code-2012_1-17-12.pdf.

³ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Oct. 10, 1967, 18 UST 2410, 610 UNTS 205.

⁴ John R. Crook, *Contemporary Practice of the United States*, 101 AJIL 185, 204 (2007); 102 AJIL 635, 667 (2008).

⁵ John R. Crook, *Contemporary Practice of the United States*, 104 AJIL 654, 666 (2010).

⁶ For discussion of the operational and security challenges of the current space environment, see U.S. Dep't of State Press Release, *Space Security—An American Perspective*, Remarks by Frank A. Rose, Deputy Ass't Secretary of State (Jan. 29, 2012), at <http://www.state.gov/t/avc/rls/182703.htm>.

The long-term sustainability of our space environment is at serious risk from space debris and irresponsible actors. Ensuring the stability, safety, and security of our space systems is of vital interest to the United States and the global community. These systems allow the free flow of information across platforms that open up our global markets, enhance weather forecasting and environmental monitoring, and enable global navigation and transportation.

Unless the international community addresses these challenges, the environment around our planet will become increasingly hazardous to human spaceflight and satellite systems, which would create damaging consequences for all of us.

In response to these challenges, the United States has decided to join with the European Union and other nations to develop an International Code of Conduct for Outer Space Activities. A Code of Conduct will help maintain the long-term sustainability, safety, stability, and security of space by establishing guidelines for the responsible use of space.

As we begin this work, the United States has made clear to our partners that we will not enter into a code of conduct that in any way constrains our national security-related activities in space or our ability to protect the United States and our allies. We are, however, committed to working together to reverse the troubling trends that are damaging our space environment and to preserve the limitless benefits and promise of space for future generations.⁷

A Department of State fact sheet with background on the proposed code of conduct follows:

Benefits of Space Systems

Space is vital to protecting U.S. economic prosperity and the national security interests of the United States, its allies, and partners. The benefits derived from space-based systems permeate almost every aspect of our daily life. The utilization of space helps by: warning of natural disasters; facilitating navigation and transportation globally; expanding our scientific frontiers; providing national decision makers with global communications, command, and control; monitoring strategic and military developments as well as supporting treaty monitoring and arms control verification; providing global access to financial operations; and scores of other activities worldwide. However, space, a domain that no nation owns but on which all rely, is becoming increasingly congested and contested.

Space Congestion

Today there are approximately 60 nations and government consortia that operate satellites, as well as numerous commercial and academic satellite operators, creating an environment that is increasingly congested. The Department of Defense tracks roughly 22,000 objects in orbit, of which 1,100 are active satellites. There are hundreds of thousands of additional objects too small to track but still capable of damaging satellites in orbit and the International Space Station. We need to work with the international community to address hazards and concerns that have arisen from this increasingly congested space environment.

⁷ U.S. Dep't of State Press Release No. 2012/063, International Code of Conduct for Outer Space Activities, Press Statement, Hillary Rodham Clinton, Secretary of State (Jan. 17, 2011), at <http://www.state.gov/secretary/rm/2012/01/180969.htm>.

Threats to Space

The threats to the space environment will increase as more nations and non-state actors develop and deploy counter-space systems. Today space systems and their supporting infrastructure face a range of man-made threats that may deny, degrade, deceive, disrupt, or destroy assets. Irresponsible acts against space systems will have implications beyond the space environment, disrupting worldwide services upon which civil, commercial, and national security sectors depend. Given the increasing threat—through either irresponsible or unintentional acts—to the long-term *sustainability, stability, safety, and security* of space operations, we must work with the community of spacefaring nations to preserve the space environment for all nations and future generations.

An International Code of Conduct for Outer Space Activities

In response to these challenges, the United States reached a decision to formally work with the European Union and spacefaring nations to develop and advance an *International Code of Conduct for Outer Space Activities*. The European Union's draft Code of Conduct⁸ is a good foundation for the development of a non-legally binding International Code of Conduct focused on the use of voluntary and pragmatic transparency and confidence-building measures to help prevent mishaps, misperceptions, and mistrust in space. An International Code of Conduct, if adopted, would establish guidelines for responsible behavior to reduce the hazards of debris-generating events and increase the transparency of operations in space to avoid the danger of collisions.

Protecting National and Economic Security

The Obama Administration is committed to ensuring that an International Code enhances national security and maintains the United States' inherent right of individual and collective self-defense, a fundamental part of international law. The United States would only subscribe to such a Code of Conduct if it protects and enhances the national and economic security of the United States, our allies, and our friends. The Administration is committed to keeping the U.S. Congress informed as our consultations with the spacefaring community progress.⁹

Congress Demands Quick Decision on Keystone Pipeline; State Department Recommends President Deny Permit Because Too Little Time for Environmental Review

The U.S. Department of State is responsible for processing applications for presidential permits for pipelines and other physical connections crossing the U.S. border.¹ During 2011, this authority placed the Department at the center of an intense public and congressional debate whether to approve the TransCanada Keystone XL Pipeline, proposed to carry heavy crude oil extracted from Alberta's tar sands to refineries around Houston and the Texas Gulf Coast.² Debate over the pipeline has pitted those concerned about the environmental effects both of

⁸ The 2010 draft Code of Conduct of the European Union for Outer Space Activities is available online at <http://www.consilium.europa.eu/uedocs/cmsUpload/st14455.en10.pdf>.

⁹ U.S. Dep't of State Press Release, *An International Code of Conduct for Outer Space Activities: Strengthening Long-Term Sustainability, Stability, Safety, and Security in Space* (Jan. 17, 2012), at <http://www.state.gov/documents/organization/181208.pdf>.

¹ John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 568, 610 (2011).

² John M. Broder & Clifford Kraus, *State Dept. Backs Canadian Pipeline*, N.Y. TIMES, Aug. 27, 2011, at A1; Juliet Eilperin, *Plan for Canada-to-Texas Pipeline Moves Forward*, WASH. POST, Aug. 27, 2011, at A2.