

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.

increased production from tar sands and of the line's potential impact on sensitive areas in the United States³ against proponents of increased U.S. access to Canadian oil⁴ and unions and others seeking the jobs and economic development projected to result from pipeline construction.⁵ In November 2011, faced with both changes resulting from Nebraska's objections to the proposed route across environmentally sensitive areas and growing public controversy,⁶ the administration decided to delay its decision until 2013.⁷

Congressional supporters of the pipeline, particularly in the Republican-dominated House of Representatives, then sought to force an early decision on the permit application. In December 2011, Congress included a provision requiring a decision on Keystone's permit application within sixty days in "must-pass" legislation temporarily continuing a reduction in payroll taxes. In response, in January 2012, the Department of State recommended denial of the application because the legally required environmental studies could not be completed in the congressionally mandated sixty days.⁸ The president agreed. The Department's announcement of its recommendation follows:

Today, the Department of State recommended to President Obama that the presidential permit for the proposed Keystone XL Pipeline be denied and, that at this time, the Trans-Canada Keystone XL Pipeline be determined not to serve the national interest. The President concurred with the Department's recommendation, which was predicated on the fact that the Department does not have sufficient time to obtain the information necessary to assess whether the project, in its current state, is in the national interest.

Since 2008, the Department has been conducting a transparent, thorough, and rigorous review of TransCanada's permit application for the proposed Keystone XL Pipeline project. As a result of this process, particularly given the concentration of concerns regarding the proposed route through the Sand Hills area of Nebraska, on November 10, 2011, the Department announced that it could not make a national interest determination regarding the permit application without additional information. Specifically, the Department called for an assessment of alternative pipeline routes that avoided the uniquely sensitive terrain of the Sand Hills in Nebraska. The Department estimated, based on prior projects of similar length and scope, that it could complete the necessary review to make a decision by the first quarter of 2013. In consultations with the State of Nebraska and Trans-Canada, they agreed with the estimated timeline.

On December 23, 2011, the Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011 ("the Act"). The Act provides 60 days for the President to determine whether the Keystone XL pipeline is in the national interest—which is insufficient for such a determination.

³ Editorial, *Wrong Pipeline, Wrong Assessment*, N.Y. TIMES, July 21, 2011, at A22.

⁴ Editorial, *Pipeline Politics*, WASH. POST, Aug. 14, 2011, at A16.

⁵ Juliet Eilperin, *Oil Pipeline a Political Problem for Obama*, WASH. POST, Oct. 8, 2011, at A3; Juliet Eilperin & Steven Mufson, *A Pipeline Predicament for Obama*, WASH. POST, Oct. 17, 2011, at A1.

⁶ John M. Broder, *Watchdog Announces Special Inquiry on Contested Pipeline*, N.Y. TIMES, Nov. 8, 2011, at A12; Steven Mufson, *Pipeline Permitting Process Will Be Reviewed*, WASH. POST, Nov. 8, 2011, at A4.

⁷ Juliet Eilperin, *Pipeline Route May Get Another Look from U.S.*, WASH. POST, Nov. 10, 2011, at A20; John M. Broder & Dan Frosch, *U.S. Review Expected to Delay Oil Pipeline Past the Election*, N.Y. TIMES, Nov. 11, 2011, at A1; Juliet Eilperin, *Administration Delays Decision on Oil Pipeline*, WASH. POST, Nov. 11, 2011, at A1.

⁸ John M. Broder & Dan Frosch, *Politics Stamps Out Oil Sands Pipeline, Yet It Seems Likely to Endure*, N.Y. TIMES, Dec. 24, 2011, at A12; John M. Broder & Dan Frosch, *Proposed Oil Pipeline Is Bugged Down by Politics*, N.Y. TIMES, Jan. 19, 2012, at A10; Editorial, *A Good Call on the Pipeline*, N.Y. TIMES, Jan. 18, 2011, at A20.

The Department's denial of the permit application does not preclude any subsequent permit application or applications for similar projects.⁹

United States Imposes Limited Anti-whaling Sanctions on Iceland

The United States opposes Iceland's policy of allowing commercial whaling by its nationals¹ and in September 2011 imposed limited nontrade sanctions on Iceland in response to its continued commercial whaling. The Pelly Amendment² authorizes the president to ban imports into the United States of products from countries that conduct fishing operations that undercut international conservation programs. It provides in relevant part:

(1) When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

. . . .

(4) Upon receipt of any certification made under paragraph (1) . . . the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in [19 U.S.C. §] 3501(8) . . . or the multilateral trade agreements (as defined in [19 U.S.C. §] 3501(4) . . .).

In July 2011, Secretary of Commerce Gary Locke certified to the president that Icelandic nationals were conducting whaling activities that diminish the effectiveness of the International Whaling Commission (IWC) conservation program.³ In September 2011, President Barack Obama addressed a memorandum to the vice president, the secretary of state, and twenty other department heads and senior officials directing a range of modest diplomatic and other measures in response to continued Icelandic whaling. The president did not order any sanctions on trade. His memorandum follows:

On July 19, 2011, Secretary of Commerce Gary Locke certified under section 8 of the Fisherman's Protective Act of 1967, as amended (the "Pelly Amendment") (22 U.S.C. 1978), that nationals of Iceland are conducting whaling activities that diminish the effectiveness of the International Whaling Commission (IWC) conservation program. In his letter of July 19, 2011, Secretary Locke expressed his concern for these actions, and I share these concerns.

To ensure that this issue continues to receive the highest level of attention, and in accordance with Secretary Locke's recommendations, I direct: (1) relevant U.S. delegations attending meetings with Icelandic officials and senior Administration officials visiting Iceland to raise U.S. concerns regarding commercial whaling by Icelandic companies and seek ways to halt such action; (2) Cabinet secretaries to evaluate the appropriateness of visits to

⁹ U.S. Dep't of State Press Release No. 2012/070, Denial of the Keystone XL Pipeline Application (Jan. 18, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/01/181473.htm>.

¹ John R. Crook, Contemporary Practice of the United States, 103 AJIL 325, 366 (2009).

² 22 U.S.C. §1978.

³ Letter from Secretary of Commerce Gary Locke to President Barack Obama, July 19, 2011, at http://www.noanews.noaa.gov/stories2011/pdfs/pellygrantsignedletter_final.pdf.