

International code of conduct against ballistic missile proliferation

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Introduction

On June 17-19, delegations from nearly 100 countries met in Madrid to continue negotiations on the drafting of an International Code of Conduct Against Ballistic Missile Proliferation (ICOC), intended to discourage states from developing or acquiring ballistic missile technology. The Code, which would only be politically binding and not an article of international law, is intended to address some of the shortcomings of the Missile Technology Control Regime (MTCR) by introducing demand-side controls on the acquisition of ballistic missile technology.

Madrid Conference

The Madrid conference built upon previous discussions held in Paris in February, and included many ballistic missile capable states including Russia, China, India, Israel, Pakistan, the United States, and all EU member states. Syria and North Korea chose not to attend either the Paris or Madrid meetings, while Iraq was not invited. Iran – an active participant in the Paris talks – pulled out of the Madrid meeting at the last minute. The US State Department, which had been criticized for not actively participating in the Paris discussions, called the latest meeting “useful and productive”.^[1]

A spokesman for Denmark, which assumed the EU presidency on July 1 and with it the responsibility for hosting negotiations on the Code, said that disagreements still exist over the extent of its obligations. “The key is to find the right balance, and the text on the table comes close to achieving that balance; however, careful consideration of the comments and amendments put forward by delegations in Madrid remains”, he said.^[2]

The Code

While the draft Code cites the need to control ballistic missile proliferation, it has very few mechanisms by which to do so. The MTCR establishes norms against certain states possessing missiles, but carries no such norms for the missiles themselves. Consequently, the MTCR is often viewed as a discriminatory cartel of ballistic missile states, perpetuating a system of ‘haves’ and ‘have-nots’. The step-by-step approach of the ICOC is indicative of the difficulty in establishing missile norms, while also creating something that existing MTCR-members can join^[3].

However, in creating a regime that is acceptable to MTCR members, the Code risks offering too little to states with ballistic missile programmes to make the initiative worthwhile. With only cursory reference to “co-operative measures” rather than more tangible incentives, it is difficult to see how the Code will be attractive to states such as Iran and North Korea that have invested heavily in ballistic missile programmes. The Code also makes it clear that any co-operative measures would not be within its scope, but would occur on a bilateral basis. However, the prospects for bilateral initiatives are uncertain. Although in the past the United States has been able to engage constructively with North Korea using incentive packages, the current administration shows no sign of following a similar strategy. Furthermore, while US-Iranian co-operation is unlikely given a history of mutual hostility, EU states are well placed to offer incentives against missile proliferation to reformers in Iran. However, the Code is likely to appeal to Central and Eastern European countries anxious to scrap their Soviet-era weaponry and expedite their entry into NATO and the EU.

Moreover, the Code’s effectiveness could be compromised by the establishment of competing control regimes, allowing states to go “venue shopping” to find the best one that suits their ambitions, according to Richard Speier, a former Pentagon official.^[4] Russia proposed a Global Control System (GCS) in 1999 with similar provisions to the ICOC but with defined incentives,^[5] while Iran has consistently called for such a regime

to be conducted under the auspices of the UN.[6] While Russian delegates said that they were “satisfied” with the recent talks, they continue to be interested in the GCS saying that “the text of the draft Code could be improved by including in it more detailed wordings on such issues as technological cooperation and the provision of guarantees for countries voluntarily abandoning their own missile programmes”.[7] The UN Study Group on Missiles, set up by Iran and backed by many Non-Aligned Movement (NAM) states, has been sidelined by the United States, France and other MTCR members in favour of the ICOC. Speaking prior to the Paris conference, Iranian official Hamid Eslami-Zad said, “The issue of ballistic missiles ... requires a professional discussion which we believe should be conducted by representatives from world countries and under supervision of the [United Nations]”.[8] While the EU has criticized the UN Study Group for not focusing specifically on ballistic missiles, it has said that “after its adoption, the Code could be of interest to the United Nations”[9].

In trying to establish concrete incentives for joining the ICOC, one option is to provide space technology assistance to states that give up their ballistic missile programmes. However, trading missiles for rockets is not an approach viewed favourably by Washington. As the technology for ballistic missiles and space-launch vehicles (SLVs) is almost identical, the United States believes that such an exchange would not address the problem of ballistic missile proliferation, and would be like “offering peaceful nuclear explosions to countries to refrain from developing nuclear weapons”, according to Speier.[10]

While the confidence building measures in the Code are commendable, they are not without their critics. Provisions for annual declarations on ballistic missile and SLV activities and policies, and invitations to host international observers at space vehicle launches, are aimed at promoting transparency and enhancing stability. However, confidence building measures are perhaps better suited to a regional rather than global scope, as has been found in Russia’s GCS negotiations. Israel, for example, has repeatedly pointed out that “in tense regions like the Middle East, announcements of missile launches are perceived as threats, not the opposite”.[11]

What’s next?

In preparing the next draft, Danish officials are expected to include references to points raised during the Madrid round of negotiations. In the absence of effective incentives to join the Code, those discussions focused on ways to incorporate some of the less ambitious proposals of the GCS into the draft. Spanish and Russian interest in including negative-security guarantees, through an agreement not to use ballistic missiles against abstainers, may also be explored in future talks.[12] In addition, future drafts of the ICOC will need to address the problem of legitimization of missile possession through the Code. While a clause in the draft stipulates that “implementation of ... Confidence Building Measures does not serve as justification for the programmes to which these ... measures apply”, the Code’s norm on missiles is so weak that it could impart legitimacy to those missile states that join.[13]

The EU hopes that an International Code of Conduct against ballistic missile proliferation will be agreed upon by the end of this year. However, the success of the ICOC will be possible only when it is considered as a complementary tool to other non-proliferation efforts. Establishing a control regime outside the MTCR represents an important step towards a more inclusive approach to engagement and agreement on missile proliferation. While the Code is thin on substance, its importance as a multilateral initiative should not be overlooked, and the opportunity for developing regional or bilateral measures in the spirit of the Code will add to its significance.

Endnotes

[1] Alex Wagner, "States Hold Second Missile Code of Conduct Meeting", *Arms Control Today*, Vol. 32 No. 6, July/August 2002.

[2] *Ibid.*

[3] Mark Smith, "Rules for the Road? The International Code of Conduct Against Ballistic Missile Proliferation", *Disarmament Diplomacy*, No. 63, March/April 2002.

[4] Mike Nartker, "Code of Conduct Ineffective, Experts Say", *Global Security Newswire*, 15 February 2002.

[5] *Ibid.*

[6] *Ibid.*

[7] "Progress Reported Towards Ballistic Missile Code of Conduct", *Disarmament Diplomacy*, No. 63 March/April 2002.

[8] Iranian Republic News Agency, Feb. 7.

[9] Mark Smith, "Rules for the Road? The International Code of Conduct Against Ballistic Missile Proliferation", *Disarmament Diplomacy*, No. 63, March/April 2002.

[10] Nartker, *op. cit.*

[11] Mark Smith, "On Thin Ice: First Steps for the Ballistic Missile Code of Conduct", *Arms Control Today*, Vol. 32 No. 6, July/August 2002.

[12] *Ibid.*

[13] *Ibid.*