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## Open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours

Geneva, 9 – 13 May 2022

Item 6 of the agenda

### Consideration of issues contained in paragraph 5 of General Assembly resolution A/RES/76/231

## International legal framework applicable to space

### Submitted by France

The current international framework for space activities is the result of gradual construction over recent decades, alternately based on non-legally binding principles and legally binding agreements.

### I. An international framework mainly consisting in voluntary norms

1. Before the drafting and entry into force of the main treaties on space, several United Nations General Assembly (UNGA) resolutions, in particular Resolution 1962 (XVIII) on the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted on 13 December 1963, established a number of essential principles with regard to space activities.
2. This development was particularly evident in strategic matters. The concept of “limiting the arms race” in space then emerged during the Cold War when the improvement of collective security was essentially conceived of in terms of “arms control”.
3. Thus, the general principle of using space for “peaceful purposes” was affirmed by various UNGA resolutions: R. 1148 (1957), R. 1348 (1958), R. 1472 (1959), and finally **R. 1721 (XVI) of 20 December 1961**, which recognizes “the common interest of mankind in furthering the peaceful uses of outer space”. This principle was used in the various treaties applicable to space.
4. The United Nations General Assembly also set an ambition to limit the arms race in space during those years. **Res. 1884 (XVIII) of 17 October 1963** on the question of general and complete disarmament, also known as the “no bombs in orbit” resolution, refers to Res. 1721 (XVI) and affirms that the UNGA is determined to take steps to prevent the spread of the arms race to outer space, more specifically inviting States not to place nuclear weapons and weapons of mass destruction (WMD) in space. This principle to ban the deployment of WMD in space reappeared in 1967 in Article 4 of the Outer Space Treaty.
5. It is therefore important to recall that while it is necessary to clearly distinguish between the legally binding framework at the international level and non-legally binding provisions, voluntary measures have historically been the first steps which led to the drafting of legally binding norms, when the strategic context allowed. The approach that has been taken today as part of this working group is that of a voluntary, non-binding one. This work can then be used, if there is consensus and if effective verification measures could be found,

for future discussions to prepare a legally binding instrument, in accordance with Resolution 76/231<sup>1</sup>.

6. This trend is also visible in relation to long-term sustainability of outer space activities. The drafting of guidelines for the long-term sustainability of space activities, such as those approved in 2019 at the COPUOS and their preamble, and endorsed by the United Nations General Assembly in October 2019, are a voluntary framework that enable tangible improvements to the sustainability of outer space activities. At the same time, the standards in place in the technical bodies also contribute to this trend.

7. For the international framework regarding States' behaviours and how they threaten outer space, it is important to remember the following:

## **II. The principle of application of international law in outer space<sup>2</sup> implies the following in particular**

### **The application of the Charter of the United Nations, which, in the event of the use of armed force for self-defence, entails:**

8. For the application of jus ad bellum, failure to distinguish between attacks from or towards outer space and attacks carried out from or in the direction of outer space from other spaces (land, sea, airspace) and depending on the type of weapons used<sup>3</sup>;

9. The need for compliance with the criteria defined by international law concerning the use of self-defence, in particular the need for an armed attack and compliance with the principles of necessity and proportionality to respond to such an attack.

10. However, in accordance with Article 2 paragraph 3, and with Chapter VI of the Charter of the United Nations, it is important to recall that States parties to any international dispute, including in the field of outer space, the continuation of which is likely to endanger the maintenance of international peace and security, must, first and foremost, seek a solution by the means outlined in Article 33 of the Charter, namely negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

### **The application of international humanitarian law (IHL), which does not, however, appear to be relevant in relation to this working group's mandate**

11. Attacks in, from or towards outer space must comply with the principles of necessity, distinction, proportionality and humanity.

12. Nonetheless, as IHL applies in an armed conflict, it must be excluded from this group's work, which focuses on norms of behaviour in peace time.

### **The application of other branches of international law and especially the laws of state responsibility:**

13. This is mainly based on customary international law, as reflected by the draft articles on Responsibility of States for Internationally Wrongful Acts presented by the International

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<sup>1</sup> "To make recommendations on possible norms, rules and principles of responsible behaviour relating to threats by States to space systems, including, as appropriate, how they would contribute to the negotiation of legally binding instruments, including on the prevention of an arms race in outer space."

<sup>2</sup> Article III of the 1967 Treaty states that "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding."

<sup>3</sup> ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, para. 39

Law Commission and which was noted in UNGA Resolution 56/83. This law provides, in the event of wrongful acts committed by a State that do not reach the threshold of armed attack as defined by Article 51 of the Charter, for measures to be taken to end this violation and engage the international responsibility of the State to which the attack may be attributed.

14. The application of these provisions should be studied with regard to those of the Convention of 29 March 1972 on International Liability for Damage Caused by Space Objects.

### **III. Regarding the working group's objectives, it appears especially necessary to focus on the principles laid down by international space law**

15. The principle of the freedom of exploration and use of outer space (placement of satellites, access to outer space, scientific research) which involves a principle of freedom of access to space for peaceful uses (Article I of the 1967 Treaty).

16. The principle of non-appropriation of outer space and celestial bodies (Article II of the 1967 Treaty) which does not contravene the principle of maintaining private property rights over objects or equipment launched into space and landed or constructed on celestial bodies (Article VIII).

17. The principle of peaceful uses of outer space, which stems from Article III of the 1967 Treaty (compliance of space activities with international law, including the Charter of the United Nations "in the interest of maintaining international peace and security and promoting international co-operation and understanding") and Article IV which provides for partial disarmament and demilitarization of outer space (States cannot place weapons of mass destruction in space and may use celestial bodies for peaceful purposes exclusively).

18. A principle of international responsibility of States for national activities in outer space that they or non-governmental bodies carry out, requiring authorization and continuing supervision of these activities by the States (Article VI of the 1967 Treaty). Furthermore, there is also a principle of liability for damages, provided for by Article VII of the 1967 Treaty, explained in detail by the 1972 Convention establishing absolute financial liability for the launching State for damage caused by its space object to the Earth's surface or to aircraft in flight and fault-based liability for damage caused elsewhere.

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