



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

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Item 6 of the agenda

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

Second part: existing international legal and other normative frameworks concerning threats arising from State behaviours with respect to outer space

Submitted by the European Union

The development of the international legal and normative frameworks on outer space began early in the twentieth century and evolved during the second half of the century into its present state, being mostly based on voluntary or non-legally binding principles.

The European Union (EU) and its Member States consider that international law applies without reservation to outer space. Thus, international law is of critical importance for outer space security. In this regard, the EU and its Member States promote the application of the international humanitarian law and human rights law in the context of outer space. The EU and its Member States are strongly committed to implement and strengthen international law regarding outer space. However, enhancing space safety, sustainability and security, in a pragmatic way, can also be done through the development of voluntary norms and principles of responsible behaviour in outer space.

I. International legal principles governing outer space

1. Discussions on preserving outer space for peaceful purposes began in the late 1950s at the United Nations, with the adoption of the first Resolution 1348 (XII) of 13 December 1958, on question of the peaceful use of outer space. The Resolution recognised already at that time “*the common interest of mankind in outer space*” and that “*it is the common aim that outer space should be used for peaceful purposes only*”. By this Resolution the ad-hoc Committee on the Peaceful Uses of Outer Space (COPUOS) was established. The COPUOS was later established as a permanent body in 1959, through the Resolution 1472 (XIV) on International cooperation in the peaceful uses of outer space.

2. General international law principles application in space was first recognised by the United Nations through Resolution 1721 (XVI) of 20 December 1961, providing that “*international law, including the Charter of the United Nations, applies to outer space and celestial bodies*”, explaining further that the outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation.

3. This application of the United Nations Charter was later recognised in the article III of the Treaty on Principles Governing the Activities of States in the Exploration and Use of



Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty, OST, 1967). Through this provision, states must comply with the standard international law thresholds on the use of force. Article 2(4) of the United Nations Charter states: “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.*”. Furthermore, Article 51 of the United Nations Charter states: “*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.*”

4. Further, in 1963, the United Nations General Assembly approved two resolutions on outer space that subsequently became the basis for the Outer Space Treaty (OST). Resolution 1884 (XVIII) called on all States “*to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any kind of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner*”. This principle to ban the deployment of weapons of mass destruction (WMD) in space reappeared in 1967 in Article IV of the OST. Furthermore, Resolution 1962 (XVIII) set out, formally, the legal principles on the exploration and use of outer space. In particular, it underlines that the exploration and use of outer space shall be carried out for the benefit and in the interests of all mankind and that the activities of States in the exploration and use of outer space shall be carried out in accordance with international law, including the charter of the United Nations. The principles set out by Resolution 1962 (XVIII) were later included in the OST. The OST constitutes the cornerstone of international space law and has established the international legal framework applicable to outer space activities. Since 1967, all the treaties and resolutions concerning the exploration and use of outer space are related to the OST.

5. After this moment, the United Nations General Assembly adopted yearly resolutions on international co-operation in the peaceful use of outer space. In addition, by these resolutions, all United Nations Member States, “*in particular those with major space capabilities*” have been urged to “*contribute actively to the goal of preventing an arms race in outer space as an essential condition for the promotion of international cooperation in the exploration and use of outer space for peaceful purposes*”.

6. The EU and its Member States consider that any international law principles, including of customary international law, that apply to the use of force, apply in outer space.

II. Space security-related legally binding instruments

7. The most foundational legal instrument of outer space law, and its broader principles of promoting the peaceful use of outer space is the OST. This treaty is clearly inspired from the previous United Nations General Assembly resolutions, making the principles they highlighted, international law. Voluntary measures have thus historically been the first steps which led to the drafting of legally binding norms, when the strategic context allowed.

8. While the OST, emphasizing that space is to be used for peaceful purposes, provides the basic framework on international space law, it contains key provisions including the prohibition of the placement of nuclear weapons in space or any other kinds of weapons of mass destruction (WMD) in orbit around the Earth or install such weapons on celestial bodies; limitation of the use of the moon and other celestial bodies to exclusively peaceful purposes; establishment that space shall be freely explored and used by all nations, the applicability of International Law, including the United Nations Charter, in outer space; and precluding any country from claiming sovereignty over outer space, including the moon and any celestial body.

9. The OST key arms control provisions are contained in Article IV. States Parties commit not to:

- Place in orbit around the earth or other celestial bodies any nuclear weapons or objects carrying WMD;

- Install WMD on celestial bodies or station WMD in outer space in any other manner;
- Establish military bases or installations, test "any type of weapons," or conduct military exercises on the moon and other celestial bodies.

10. The term "weapons of mass destruction" is not defined, but it is commonly understood to include nuclear, radiological, chemical, and biological weapons. The treaty, however, does not prohibit the launching of ballistic missiles, which could be armed with WMD warheads, through space.

11. Other legally binding instruments that develop some of the principles already contained in the OST are the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement, 1968), the Convention on International Liability for Damage Caused by Space Objects (Liability Convention, 1972), the Convention on Registration of Objects Launched into Outer Space (Registration Convention, 1976), and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement, 1984).

12. Another legally binding instrument explicitly mentioning also outer space was the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water of 1963.

13. None of these legally binding instruments, nor the two proposed draft legally binding instruments, include a verification mechanism.

III. Other space-related instruments

14. Although not an instrument designed for outer space specifically and a non-legally binding instrument, the Hague Code of Conduct against Ballistic Missile Proliferation of 2002 (HCoC) provides for transparency and confidence building measures, such as pre-launch notifications, on space launch activities as activities using ballistic missile technologies. Even though the non-proliferation objective of the HCoC is paramount, as reflected in the title of the HCoC, it also addresses the question of space, with Article 2f recognising that "*states should not be excluded from utilising the benefits of space for peaceful purposes, but that, in reaping such benefits and in conducting related cooperation, they must not contribute to the proliferation of Ballistic Missiles capable of delivering weapons of mass destruction*".

15. The link between the HCoC and outer space is further enhanced as it requires subscribing states to ratify, accede to or otherwise comply with three major international space conventions: the OST, the Liability Convention and the Registration Convention.

16. The Missile Technology Control Regime (MTCR, formed in 1987), an international export control regime where participating states seek to limit the proliferation of missiles and missile technology, is indirectly linked to space security as it aims to control export of goods and technologies related to delivery systems for WMD. Such systems include i.a. ballistic missile systems, space launch vehicles and sounding rockets. The MTCR Guidelines specifically state that the Regime is "*not designed to impede national space programs or international cooperation in such programs as long as such programs could not contribute to delivery systems for weapons of mass destruction*".

17. In addition, the Constitution and Convention of the International Telecommunication Union (ITU Constitution, 1992) has a role in controlling and regulating the use of radio communication and orbits for satellites around the Earth, specifically civil and commercial satellites. The ITU Constitution sets out that the regulation of radiocommunications should "*ensure the rational, equitable, efficient and economical use of the radio-frequency spectrum by all radiocommunication services, including those using the geostationary-satellite or other satellite orbits*" but adds that "*Member States retain their entire freedom with regard to military radioinstallations.*" Nonetheless, the military satellites must, so far as possible, observe the ITU's rules on giving assistance in case of distress and on measures to be taken to prevent harmful interference.

IV. Conclusions

18. The EU and its Member States consider that legally binding instruments in outer space were often based on previous non-legally binding commitments, through the adoption of different resolutions in the United Nations framework. Therefore, the EU and its Member States emphasise that agreeing on norms, rules and principles of responsible behaviours represent a first important step to maintain space security, which should cover all relevant threats, be they ground-to-space, space-to-space, space-to-ground or ground-to ground.

19. The EU and its Member States acknowledge that there is no international legal or normative instrument to govern the development, testing and proliferation of anti-satellite weapons (ASAT). In this regard, the EU and its Member States will elaborate on a possible normative proposal in future contributions to the Open Ended Working Group (OEWG). The EU and its Member States call on all States to refrain from any such tests.

20. The main principles that govern space activities (non-appropriation of outer space by any country, arms control, the freedom of exploration, the responsibility for national activities in outer space and the liability for damage caused by space objects, due regard, the prevention of harmful interference with space activities) should be seen, in addition to the recognition of the application of international law, including the United Nations Charter, to outer space, as the foundation of the process in the OEWG. The EU and its Member States also consider that transparency and confidence-building measures are important to be taken into account as an additional way in reducing the risks of misperception, miscalculation and unwanted escalation.

21. Legally binding instruments usually reflect a consensus among States and the international community. Groups like Group of Governmental Experts, the OEWG, and United Nations General Assembly resolutions or the establishment of voluntary norms are useful tools to shape international consensus and to build trust to take more ambitious steps potentially leading to a comprehensive, effective and verifiable legally binding instrument designed to cover all relevant threats related to outer space.

22. Voluntary commitments, non-legally binding guidelines and principles and legally binding instruments should not be seen as mutually exclusive, as the framework governing outer space activities is made of both legally binding and non-legally binding instruments. Both are needed for the preservation of a safe, secure and sustainable space environment and the peaceful use of outer space on an equitable and mutually acceptable basis for all, for present and future generations. Indeed, most of the provisions contained in legally-binding treaties related to space were inspired from principles contained in United Nations General Assembly resolutions.

23. Considering the characteristics of outer space, particularly the dual-use issue and the difficulty of attribution and verification, the EU and its Member States underline that, without excluding the possibility of a legally binding instrument in the future, the most pragmatic, realistic and concrete way to strengthen space security and to prevent misconceptions and miscalculations, at this point in time, is to agree upon norms, rules and principles of responsible behaviours and to increase transparency and predictability of space activities. In other domains, such as maritime, cyberspace, telecommunication, norms of behaviour constitute good examples, and different best practices and lessons learned from other fields could be taken into consideration for the work on responsible behaviours in outer space.
