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

Geneva, 30 January-3 February 2023

Agenda item 6 (c)

Consideration of issues referred to in paragraph 5 of General Assembly resolution 76/231 of 21 December 2021: to make recommendations on possible norms, rules and principles of responsible behaviours 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

Considerations concerning the counterproductivity of considering the applicability of international humanitarian law (IHL) to space activities

Working paper submitted by the Russian Federation*

1. The pertinent part of IHL has effect anywhere there is an armed conflict, including one outside national jurisdiction. However, discussing the applicability of IHL within the mandate of the Open-ended working group set up under General Assembly resolution 76/231 on reducing space threats through norms, rules and principles of responsible behaviours, would automatically mean recognizing that the emergence of armed conflict in outer space is admissible. The adoption of this starting point creates a political and legal paradigm for States that runs counter to the fundamental tenets of space exploration, above all the international community's focus on its exploration and use in the interests of maintaining international peace and security and fostering international cooperation and understanding.
2. IHL is a set of treaty and customary rules governing the means and methods of warfare that seek to provide protection for victims of armed conflict. Key principles of IHL include the distinction between combatants and persons not taking part in hostilities, military and civilian installations and infrastructure, proportionality, the prohibition of indiscriminate and disproportionate attacks, the obligation to take every precaution to avoid, or at least minimize, collateral damage to the civilian population. In view of this, it is correct to speak of the applicability of IHL to areas in which active hostilities are possible.
3. All mankind's common interest in making progress in the exploration and use of outer space for exclusively peaceful purposes in accordance with the generally recognized principles and standards of international law and the desire to promote extensive international cooperation in both the scientific and legal aspects of the exploration and use of outer space for peaceful purposes are firmly stated in the preamble to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereinafter referred to as the "Outer Space Treaty").
4. In accordance with article IV, States parties to the Treaty "undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer

* This paper was submitted after the deadline owing to circumstances beyond the submitter's control.



space in any other manner”. The moon and other celestial bodies must be used exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies is forbidden. At the same time, this article permits the use of military personnel for scientific research or any other peaceful purposes. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies is allowed.

5. Thus, the regime has established the “partial demilitarization” of outer space (the ban refers to the stationing of weapons of mass destruction), while the moon and celestial bodies are fully demilitarized. A number of countries abuse the absence of a formal embodiment in international law of a complete ban on the stationing of weapons in outer space to justify the admissibility of conflict in space and therefore the need to discuss the applicability of IHL.

6. States’ interest in preserving outer space for research and use exclusively for peaceful purposes has been recorded in a number of fundamental international treaties on space law, as well as in the annual General assembly resolutions adopted at the initiative of Russia entitled “No first placement of weapons in outer space” and “Further practical measures to prevent an arms race in outer space”.

7. In particular, the resolution on no first placement of weapons in outer space emphasizes “the paramount importance of strict compliance with the existing legal regime providing for the peaceful use of outer space”. It recognizes that the legal regime alone does not “by itself guarantee the prevention of an arms race in space” and that there is therefore a need to strengthen it. It encourages all States, especially space-faring nations, to consider the possibility of upholding as appropriate a political commitment not to be the first to place weapons in outer space. More than 120 States vote for the resolution every year.

8. Thirty-two countries, including Russia, have made a commitment not to be the first to place weapons in outer space. Thus, in 2005, all CSTO member states endorsed it.¹ The commitment to no first placement was reaffirmed in 2019 in the statement of the Permanent Representatives of the CSTO Member States of the United Nations in support of the multilateral initiative on no first placement of weapons in outer space.

9. The resolution on further practical measures to prevent an arms race in outer space proclaims it a historic responsibility of all States to ensure that the exploration of outer space is carried out exclusively for peaceful purposes for the benefit of mankind.

10. Clearly, such broad support for not placing weapons in outer space in order to prevent an arms race and thereby eliminate a serious threat to international peace and security is incompatible with launching a discussion on the applicability of IHL in outer space, which implies the admissibility of active hostilities there.

11. Proponents of the applicability of IHL in outer space actively promote the idea that, since activities of a military nature in space are not comprehensively covered by international law, this opens up the possibility of conducting military operations in outer space. Therefore, IHL might well be required to resolve the consequences of some military conflicts in outer space. This formulation of the issue does not withstand criticism. In fact, the inclusion of IHL in the regulation of space activities opens a “Pandora’s box” and sends a false signal to the world community about war in outer space as a possibility, whereas the entire international legal arsenal is resolutely aimed at preventing military operations in outer space.

12. The Russian Federation proceeds from the assumption that conflicts in outer space are inadmissible in principle as they are a serious existential threat to all humankind. We call on all United Nations States Members to focus their efforts on consolidating the non-proliferation regime for both weapons of mass destruction and conventional weapons in outer space in order to achieve the goal of preventing an arms race in outer space.

¹ Collective Security Treaty Organization.