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

Geneva, 28 August – 1st September 2023

Item 6 of the agenda

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

Feedback paper regarding the possible elements of the final report of the Open-ended working group (OEWG) prepared by the Chair of the OEWG established pursuant to the UNGA resolution 76/231

Submitted by the Russian Federation

1. The Russian Federation examined the possible elements of the OEWG final report relating to items 6(a) and 6(b) prepared by the Chair of the Open-ended working group (OEWG) established pursuant to the UNGA resolution 76/231 "Reducing space threats through norms, rules and principles of responsible behaviours."
2. We note the generally unbalanced nature of reflecting the results of the discussions conducted during the second and third sessions of the OEWG. The text, for the most part, represents a compilation of positions of the Western States. It actively exploits conceptual framework, terminology (for example, "responsible behaviour") and wordings that have been proposed by them although not approved by the delegations within the OEWG. The idea of dividing States and participants in outer space activities into "responsible" and "irresponsible" is obsessively pushed through in order to fix certain understandings in UN documents that could later be used by the States of the West as a basis to put pressure on opponents. The Russian Federation along with other space-faring nations have repeatedly spoken out against it during the OEWG sessions.
3. The text does not take into account the approaches of principle of the overwhelming majority of UN Member States, including the Russian Federation, aimed to prevent an arms race in outer space (PAROS) and its weaponization as well as to preserve the exploration and use of outer space for peaceful purposes. We emphasize that the majority of UN Member States consider PAROS as an unconditional and persisting priority. This topic has been recorded as one of the key issues of the disarmament agenda as far back as in 1978 by the decisions of the First UN Special Session on Disarmament. This understanding annually finds endorsement in relevant UNGA resolutions (primarily, "Prevention of an arms race in outer space", "Further practical measures for the PAROS" as well as "*Transparency and confidence-building measures in outer space activities*" and "No first placement weapons in outer space.")
4. Besides, the absence of reference to the Russian initiative/political commitment on *not to be the first to place weapons* in outer space that 32 States have already been taken upon is a serious omission.
5. Specific proposals to adjust the Chair-prepared elements on item 6(a) of the OEWG agenda are attached.



6. As for item 6(b), apart from the above-listed omissions, it contains the whole number of distortion from the development and outcome of deliberations. Thus, the position of mainly Western States is presented as a consensus, although in fact it is not the case. At the same time, it does not reflect the Russian approaches to the outer space challenges and threats as well as to the activities that are to be potentially banned in future.

7. In principle, "space dangers and threats" can essentially be divided into two categories: those arising from peaceful uses of outer space (e.g., from the rapidly increasing number of small satellites and their constellations in Earth orbit; space debris problem; dangerous proximity operations; etc.) and those resulting solely from the militarization of outer space.

8. In relation to outer space, the Military Doctrine of the Russian Federation considers intention to place weapons in outer space as the main external military danger, and disruption of the functioning of outer space monitoring systems as the military threat.

9. "Military danger" is understood as a situation in the inter-state or intra-state relations characterized by the set of factors which can under certain conditions lead to the emergency of a military threat. The term "military threat" is defined as a situation in the inter-state or intra-state relations characterized by a real possibility of an outbreak of a military conflict between opposing sides and by a high degree of readiness of a given State (group of States) or separatist (terrorist) organizations to resort to military force (armed violence). These understandings need to be formalized within the framework of the OEWG.

10. As outer space systems that pose space dangers and threats, which are purely a consequence of the militarization of outer space, we consider:

- Weapons in outer space for any purposes, including missile defence, as anti-satellite means, for attacking targets on Earth or in the atmosphere;
- Outer space weapons for missile defence, as anti-satellite means, for attacking targets on Earth or in the atmosphere.

11. These capability categories are integrated and comprehensive and cover all systems of concern to the UN Member States with respect to the militarization of outer space.

12. We consider the above-mentioned space dangers and threats as actions that should potentially be prohibited by a multilateral legally binding instrument on PAROS, including such as:

- The use space objects as a means of destroying any targets on Earth, in the atmosphere or outer space;
- The creation, testing and deployment of weapons in outer space for any purposes, including for missile defence, as anti-satellite means, for attacking targets on Earth or in the atmosphere;
- The creation, testing, deployment and use outer space weapons for missile defence, as anti-satellite means, for attacking targets on Earth or in the atmosphere;
- The destruction, damage, disruption of normal functioning or change of flight trajectory of other States' space objects;
- The assistance to and incitement of other States, groups of States, international, intergovernmental or any non-governmental organizations, including non-governmental legal entities established, registered or located on territory under their jurisdiction and/or control, to participate in the above activities.

13. In turn, we note that the category of space hazards and threats arising from and related to the exploration of outer space for peaceful purposes is the subject of discussion by the UN Committee on Outer Space (COPUOS). We are thus convinced that any decisions regarding this category should be taken solely in the framework of COPUOS. Any understandings on this matter within the OEWG would be counterproductive to the further work of the

Committee. In this regard, we would deem it possible merely to make a recommendation by the OEWG to continue to address this issue within COPUOS.

14. We expect that the above-mentioned approaches of principle of the Russian Federation will be taken into account in the draft final report of the OEWG to ensure its adoption at the final session in August this year.

Annex

Agenda item 6 a)

Existing international legal and other normative frameworks concerning threats arising from State behaviours activities with respect to outer space

1. The working group reaffirmed the applicability of international law, including the Charter of the United Nations, to activities in the exploration and use of outer space. The working group recalled that this principle was first recognized by the General Assembly in its resolution 1721 (XVI) of 20 December 1961 and reflected in 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 (the "Outer Space Treaty"). ~~It was also noted that that applicable international law included customary international law, the law of State responsibility and human rights law.~~

2. The working group ~~emphasized the importance of~~ **confirmed the commitment to the decisions adopted at the 1978 UNGA First Special Session devoted to Disarmament aimed at ensuring exploration and use of outer space for exclusively peaceful purposes, preventing an arms race in outer space (PAROS) and launching relevant negotiations in accordance with the spirit of the 1967 Outer Space Treaty, as well as to the Outer Space Treaty as being** the foundation of space governance. The working group recalled the provisions of the Outer Space Treaty particularly relevant to its work, in particular:

(a) The freedom of exploration and use of outer space, including the Moon and other celestial bodies without discrimination of any kind, on a basis of equality and in accordance with international law, and free access to all areas of celestial bodies. (article I);

(b) The non-appropriation of outer space, including the Moon and other celestial bodies (article II);

(b)bis Commitment of States Parties to the Treaty to 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 cooperation and understanding (article III);

(c) The non-placement in orbit around the Earth of any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, and the non-installation of such weapons on celestial bodies or their stationing in space in any manner, the use of the Moon and other celestial bodies exclusively for peaceful purposes; refraining from the establishment of military bases, installations and fortifications and the testing of any type of weapons and the conduct of military maneuvers on celestial bodies" (article IV);

(d) Assumption by States Parties of international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether carried out by governmental agencies or by non-governmental entities, as well as the continued supervision of the activities of non-governmental entities in outer space (article VI);

(e) Assumption of liability for damage to other States Parties caused by objects launched into outer space, including the Moon and other celestial bodies (article VII);

(f) The principles of co-operation and mutual assistance, due regard for the interests of other States Parties, avoidance of harmful contamination and adverse changes in the environment of the Earth and international consultations in the case of potential harmful interference (article IX).

3. The working group also reaffirmed **the commitment to** the other principal United Nations treaties on Outer Space, including: The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; The Convention

on International Liability for Damage Caused by Space Objects; ~~The Convention on International Liability for Damage Caused by Space Objects~~, **The Convention on Registration of Objects Launched into Outer Space**. The working group also emphasized the importance of the principals contained in the Declaration of Legal Principles Governing the Activities of States in the Exploitation and Use of Outer Space. The working group also noted other efforts to further develop principles contained within the Outer Space Treaty, including the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.

4. In addition, the working group affirmed that certain international treaties in the field of disarmament and arms control are applicable to outer space. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water banned tests of nuclear weapon test explosion, or any other nuclear explosion, in a number of areas including outer space. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques prohibited the military or any hostile use of environmental modification techniques is also applicable to outer space.

5. ~~The working group also affirmed the availability of judicial mechanisms for the peaceful settlement of disputes between States, notably the International Court of Justice.~~

6. The working group considered in particular the duty of due regard, which could be found in the Outer Space Treaty and related treaties. The working group considered the application of due regard in outer space should not deviate significantly from its application in the context of the high seas. In this connection, the working group considered that jurisprudence on the law of the sea has since clarified that the duty of due regard represents a balancing of rights and interests between and among States, and between States and the international community as a whole. **At the same time as it was held in the Arbitral Award of 18 March 2015 in the Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), the ordinary meaning of “due regard” is to have such regard for the rights of the State as is called for by the circumstances and by the nature of those rights; in this formulation there is no universal rule of conduct. The working group acknowledged that the outcome of the application of a “due regard” obligation cannot be predetermined but depends on a number of circumstances of different nature which operate on a case-by-case basis. Thus, the duty of due regard entails a large degree of flexibility and therefore cannot be fixed as a universal rule. The working group considered the use of the consultation mechanism established by Article IX of the Outer Space Treaty as sufficient to comply with the duty of due regard.**

7. ~~In the context of outer space, this balancing of rights and interests should involve two dimensions: first, between and among spacefaring nations; and, second, between a spacefaring nation and the wider international community. The working group considered that the duty of due regard does not constitute a blanket limit on State conduct, nor does it permit a State merely to note the rights of other States and still to act as it wishes in disregard of those rights. In most cases, the duty of due regard would necessitate consultations on the basis of good faith, and require that the avenues for such consultations are exhausted. Such consultations should encompass a conscious balancing of rights and interests, including extensive concern regarding the other party’s reaction; suggestions of compromise and willingness to offer assurances; and an understanding of other parties’ concerns in connection with any proposed activities.~~

8. **The working group confirmed that, although existing international treaties related to outer space and the relevant regime provided by them play a positive role in the regulation of outer space activities, they cannot completely prevent an arms race in outer space, placement of weapons in outer space and threat or use of force in outer space, from outer space or in relation to outer space and to preserve outer space for peaceful purposes. The working group emphasized the desirability need of improving and strengthening the existing international law and its implementation without any revision of the current treaties and agreements.** The working group stressed in particular the importance of strengthening the existing legal framework applicable to outer space to deal with new threats and risks. In this connection, the working group noted that the prohibition contained within article IV of the Outer Space Treaty, on the non-placement in orbit around the Earth of any objects carrying nuclear weapons or any other kinds of weapons of mass

destruction, and the non-installation of such weapons on celestial bodies or their stationing in space in any manner, does not address ~~objects carrying~~ other types of possible weapons ~~nor objects that could be used as a weapon.~~

9. The working group affirmed that the prohibition on the threat or use of force, as contained in Article 2(4) of the Charter of the United Nations, is applicable in outer space, **recognizing, however, that this provision is not sufficient to prevent an arms race in outer space.** ~~The working group discussed issues in connection with the application of Article 51 of the Charter of the United Nations. The working group also discussed the question of what would constitute an armed attack in outer space, within the meaning of Article 51 of the Charter of the United Nations. The working group recalled the obligation of States, under article 2(3) of the Charter, to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.~~

9bis. The working group also affirmed the availability of the consultation mechanism provided by the Outer Space Treaty (article IX) as well as of various means for peaceful settlement of disputes between States, including judicial mechanisms such as the International Court of Justice.

10. ~~The working group affirmed that international humanitarian law applies in situations of international armed conflict and non-international armed conflict. Due to concerns that the objective of international negotiations on the prevention of an arms race in outer space should be to prevent attacks from occurring in or from outer space, the working group did not consider how international humanitarian law would constrain acts involving space systems undertaken by parties to armed conflict. Furthermore, the working group reaffirms that no discussion regarding the application or further elaboration of international humanitarian law can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations.~~

11. ~~The working group considered the applicability of aspects of elements drawn from the legal regimes governing other domains, notably aviation and the law of the sea as well as norms of responsible State behaviour in cyberspace.~~

12. The working group underscored the importance of transparency and confidence-building measures as a **an intermediate, temporary supportive** mechanism to reduce the risks of misperception, miscalculation and unintended escalation, **counteract transformation of outer space into an arena for combat operations and confrontation, prevent an arms race in outer space (PAROS), ensure predictability in outer space and outer space security.** The working group also recognized that such measures could also become an element of a legally binding instrument on the prevention of an arms race in outer space. The working group recalled the transparency and confidence building measures contained in the 2013 report of the group of governmental experts (A/68/189) and called for their implementation. The working group also recalled the criteria for transparency and confidence-building measures outlined by that report. **The working group also acknowledges that TBCM's effectiveness, taking into account their voluntary nature and their realization on the basis of the principle of equal and indivisible security for all, depends on the level of trust among States, global context in the sphere of international security and all factors making impact on strategic stability.**

13. The working group reaffirmed that transparency and confidence-building measures for outer space activities should complement, but not substitute for, ~~the~~ **an international legally binding instrument to prevent an arms race in outer space and to preserve it for peaceful purposes, prohibiting the placement of any kind of weapons in outer space and the threat or use of force in, from or against outer space, that might provide for a development of relevant verification measures in the future in arms control agreements and regimes. In order to be effective in the context of maintaining international security and strategic stability** ~~Voluntary transparency and confidence-building measures could~~ **should** contribute to the consideration of concepts and proposals for legally binding arms control measures as well as verification protocols included in legally binding international instruments. **TBCMs as such cannot ensure PAROS tasks.**

14. ~~The working group considered a number of examples of existing transparency and confidence building measures, derived from 2013 report of the group of governmental~~

~~experts as well as from various United Nations and other international instruments, mechanisms or arrangements. The working group stressed in particular the importance of effective and timely communication in order to build transparency and trust. The working group considered there was merit in the elaboration of further transparency and confidence building measures aimed at the PAROS. The working group noted the relevance of the international initiative/political commitment of no first placement of weapons in outer space (NFP), taken by 32 States, contributing to maintaining international peace, ensuring equal and indivisible security for all, and increasing predictability and sustainability of States' activities aimed at exploring and using outer space for peaceful purposes.~~

14bis. The working group confirmed the urgent need to launch a negotiation process on an international legally binding document, basis for which could be provided by a draft Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects introduced by Russia and China at the Conference on Disarmament.
