Proposal of considering Optional Additional Protocol(s) to the Outer Space Treaty

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I. Key points

(a) The validity and relevance of the Outer Space Treaty as the cornerstone of the international Legal Space Regime is universally recognized;

(b) Nevertheless, the impressive scientific and technological progress in all areas of Space related activities, and the proliferation of new Space actors, from States and private companies, have significantly increased the possible risks and threats stemming from those activities,

(c) For these reasons, the main concepts and principles contained in the Outer Space Treaty need to be operationalized as new norms and as legally binding measures;

(d) Therefore, it should be a critical priority for the international community to discuss new understandings to reduce risks to international peace and security and to enhance predictability in space that would reduce risks of misperceptions and inadvertent conflicts in space;

(e) The proposal is not to renegotiate the Outer Space Treaty but to develop optional additional protocol(s) to allow those states that are interested in strengthening this instrument to do it by emphasising some concepts that consider the experience of the last five decades;

(f) There are important precedents of optional protocols in the security, arms control, and disarmament realm, for example, the five protocols of the 1980 Convention on Conventional Weapons (CCW);

(g) This proposal is without prejudice to the discussion of other proposals and is not intended to substitute a new Treaty on PAROS or the establishment of norms of Responsible Behaviours.

II. Proposal to consider a third way: Beginning of a negotiation process for optional additional protocol(s)

1. The full validity and relevance of the Outer Space Treaty (OST) as the fundamental agreement of the international legal regime of Outer Space has been universally recognized.

2. However, considering that it was adopted in 1967, it is evident that it is not able to cover all the current developments in human activities in this area, determined by fast technological advances; the significant increase in space actors; and especially, the
development of new categories of weapons that can affect space systems, including terrestrial based systems.

3. In this regard, it should be noted that the OST prohibits the deployment of nuclear weapons and other weapons of mass destruction, but it does not refer to conventional weapons, nor to land-based systems that are directed into space, nor to systems of use or dual purpose.

4. In this context, the idea arises of proposing the negotiation of optional Additional Protocol(s) to the OST, which could allow to extend the ban of placement to all forms of weaponry and address other Space Security concerns.

5. It should be noted that the Italian delegation proposed an additional Protocol in 1979. On that occasion, the international context was very different. Also, the limited number of Space actors, and the fact that the OST had entered into force only one decade earlier, made delegations consider it would be premature to propose additional protocols.

6. Today the context has changed, and it is worth reconsidering that option, with the necessary adjustments.

An instrument of these characteristics would present the following advantages:

(a) Being an optional protocol, it would constitute a legal instrument that supplements the OST. As the word “optional” indicates, the protocol does not automatically bind the states parties of the original treaty but must be separately agreed to by the states concerned;

(b) An optional protocol could address both 4th and 1st committee issues, considering that the OST is applicable to security and safety;

(c) It would not be a matter of renegotiating the treaty, nor of initiating a legal process that could weaken it, but, on the contrary, it would take advantage of the existing legal framework to update it to the current international context, thus strengthening the international legal regime;

(d) A proposal of this type would allow the inclusion of an option that opens the way towards a binding international legal instrument, which can generate support in most delegations, without necessarily contradicting the efforts of other countries to develop other types of non-binding initiatives.

To have prospects of being adopted by consensus, this protocol(s) may include proposals related to anti-satellite tests, as well as any other destructive test in space, and other threat concerns regarding weaponization of space. In that sense, the additional protocol(s) could address those threats, and other concerns that have emerged in recent discussions.

(e) The proposal for optional additional protocol(s) could also address the issue of the application of International Humanitarian Law in Outer Space, considering there seems to be a consensus among International Law experts about its applicability. In this regard, an optional additional protocol also could represent an opportunity to strengthen and consolidate that common understanding;

(f) Another issue that could be addressed is the application of the principle of Due Regard and Environmental protection, which is mentioned very explicitly in the treaty (Art IX) and refers to the need to avoid pollution and other damage to the environment;

With current knowledge, the evolution of space activities, and the development of environmental law, it is timely to operationalize and strengthen that commitment.

(g) We believe that the presentation of a document of these characteristics would allow us to contribute substantive content to the discussions on space security regulations and have a positive impact on the outcome of this process, in the understanding that it does not conclude the debate but complements other initiatives.
III. Possible options towards optional additional protocol(s)

(a) One alternative is to recommend establishing a working group with a mandate to consider and discuss possible optional additional protocol(s);

(b) This would have to be done through a UN General Assembly resolution that would discuss the wording of the mandate of the working group. As a possible outcome of the discussions, a diplomatic conference could be convened to negotiate these optional additional protocol(s);

(c) Another option is to recommend a resolution of the General Assembly to mandate the COPUOS Legal Subcommittee to discuss proposals of possible optional protocol(s);

(d) A third option would be that the General Assembly convene the first Meeting of States Parties of the OST with a mandate to review the implementation of the Treaty and to consider proposals of optional additional protocol(s).

This is not an exhaustive list and other options might be considered.

IV. Conclusions

7. This proposal could represent a third way between two approaches that—although complementary in our view—have appeared as contradictory: the distinction between “soft law” alternatives and the promotion of an international binding Treaty that prohibits the placement of weapons.

8. A reiteration of the debate about new legally binding instruments and soft law initiatives in general has proven to be unproductive and has so far contributed to preserving the stalemate of these discussions.

9. Through this Protocol(s), all threat concerns could be addressed gradually, to the extent of the will and possibilities of each state, without necessarily preventing the advancement of other proposals of legally binding instruments, or of any other initiatives in this regard.

10. This proposal is made as a suggestion to enrich the discussions of this GGE and expand the range of possibilities of our deliberations, allowing us to move forward and help unblock a debate that has been stagnant for many decades.

11. We invite experts to consider this proposal and to explore the synergies with other ideas and suggestions.