



Joint EU response to the possible elements on items 6(a) and 6(b) in relation to the Open Ended Working Group on reducing space threats through norms, rules and principles of responsible behaviours (OEWG)

The EU and its Member States fully supported the establishment of the Open Ended Working Group on reducing space threats (OEWG) as a pragmatic step in a cooperative and comprehensive process that helps to build a common understanding of what can be considered responsible and irresponsible behaviours.

The EU and its Member States appreciate all the efforts of the OEWG Chair in preparing the possible elements on items 6(a) and 6(b) in relation to the Open Ended Working Group on reducing space threats through norms, rules and principles of responsible behaviors (Elements paper). We welcome the consultation on this documents.

In order to have an even better understanding of the elements on items 6(a) and 6(b), the EU and its Member States deem that some aspects would need to be further included, clarified or amended. This EU joint response is without prejudice to the individual positions that EU Member States may wish to submit in addition to this one.

I. Elements that should be further included

1. The working group should emphasise the complementarity between the possible norms, rules and principles, that might be recommended to be further developed, and the existing international legal and normative framework, and that these possible non-legally binding instruments should not exclude any possible future legally binding instrument. Voluntary measures have historically been the first step, which led to the drafting, negotiating and concluding of legally binding norms.
2. We note that among the Outer Space Treaties in para 3 of the Elements paper the Convention on Registration of Objects Launched into Outer Space is missing and a reference should be added.
3. While we welcome the reference to the TCBMs in para. 13 and 14, we consider that the Hague Code of Conduct against Ballistic Missile Proliferation (HCoC) should be specifically referenced in the Elements paper, considering its role as the sole existing instrument aiming at universality and fostering confidence building and transparency between states in the field of ballistic missiles and its direct link with the mandate of the OEWG.

II. Elements that should be clarified or amended

1. We consider that international humanitarian law is a branch of international law applicable to outer space and should be included in the list mentioned in para 1 of the Elements paper. This is also recognised by UNGA Resolution 77/41 that mentions in its preamble in para. 2 “*Reaffirming the applicability of international law, including international humanitarian law and the Charter of the United Nations, to activities in outer space,*”.
2. We deem that the fundamental principles enshrined in the Outer Space Treaty (OST) are not fully reflected in para. 2 and that the list should be updated with the full set of principles accordingly.
3. In connection with para. 4, we consider that the international treaties in the field of disarmament and arms control are not confined to the terrestrial domain.
4. In para. 8, we consider that the text could be further elaborated, considering that space environment is becoming increasingly congested, contested and competitive and the number of risks and threats to space objects and systems is rising significantly, which represent the main need for strengthening the existing legal framework applicable to outer space. Furthermore, considering the role of the OEWG, we consider that this should focus mainly on the behavioural approach.

5. In connection with para. 10, we are of the opinion that international humanitarian law applies to all situations of armed conflict, wherever they take place. We regret that no consensus could be found to consider how international humanitarian law would constrain acts involving space systems undertaken by parties to armed conflict.

6. In the first sentence of para. 19, we consider that the notion of “threat” should be further clarified.

7. In para. 20(a), we consider that the testing of a DA-ASAT capability *per se*, may lead States to perceive their space assets, to be at risk and could be considered as irresponsible behaviour. The creation of large amounts of debris represents a consequence of the testing or use of such capability.

8. We suggest that the last sentence of let. (d) under para. 20 reflect the legal obligation embodied in Article IV, para. 1 of the OST.

9. We find the provisions of para. 22 to be confusing and would necessitate some further clarifications. Firstly, we believe that the main focus should be made on the behaviours. This is also applicable to para. 22 (a), referring to the rendez-vous and proximity operations. Secondly, the differentiated concepts of “dual-use” and “dual purpose”, proposed by UNIDIR, could be further explained for reporting purposes in the Elements paper.

10. In para. 23 we consider that the language is not very clear and might give rise to different interpretations. Indeed, we consider that a focus on behaviour is compatible with the traditional arms control framework.

11. The point and mandate of this Working Group is to discuss and address behaviours that are not prohibited in current international law but generate tensions and increase the level of threat. With this in mind, in connection with para. 24, we naturally consider that any action that violates the UN Charter would be irresponsible; an unlawful behaviour is undoubtedly irresponsible. It is not just one of the many factors for consideration.

12. We consider that let. (g) under para. 25 is not consensual, reflecting only the view of some, and this provision should not be put on the same level with other elements that could be viewed as consensual.

13. Considering the definitional ambiguity regarding the question of what constitutes a weapon in space, which will affect all objects placed in space, or possessing capability to affect objects in outer space that could in one way or another be considered to be a weapon if used in an aggressive manner, in para. 27 (b) and (c), we suggest the deletion of the notions “armaments” and “co-orbital weapon and an electronic warfare”, or the explanation that a large number of participants underlined the definitional ambiguity of these terms that makes these recommendations practically impossible to implement.

14. In our view, in para. 27(c) and (j) we consider that the two actions or activities that could be considered as irresponsible should not consider only “national security satellites” or “military space systems” – two terms whose definition also lacks clarity. This is in particular due to the dual-use nature of space objects and space systems and because the destruction of any space objects and systems or interruptions of their services significantly impacts and disrupts connected societies which are increasingly dependent on these services.

15. In para. 27(e) the intentional and destructive act that creates “debris, in particular multiple long-lived debris”, should be considered as irresponsible. As the space environment becomes increasingly congested, any debris could present a high risk for other space objects of another State.

The EU and its Member States reiterate their commitment to engage constructively in the Open-Ended Working Group process and to further contribute to its work.

The EU continues to emphasize the important contribution that diverse stakeholders, as international organisations, commercial actors and civil society representatives can make to the OEWG works. The OEWG work can benefit from the valuable technical knowledge and experience that these stakeholders bring to the table and as we work collectively to make space more safe, secure and sustainable for all, for present and future generations.
