

## **French contribution to the third session of the Open-Ended Working Group (OEWG) on the reduction of space threats through norms, rules and principles of responsible behaviour.**

\* \* \*

*Ahead of the third session of the OEWG, the aim of which is "to make recommendations on possible norms, rules and principles of responsible behaviour 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", France wishes to submit this contribution.*

### **I. The norms-based approach on responsible behaviour is not conceived in a legal vacuum.**

Any norms of behaviour concerned by this contribution and those that will be discussed at the third session of the OEWG and in future work need to comply with the pre-existing normative framework applicable to space. Said framework gathers all relevant legal instruments, and first and foremost the Charter of the United Nations. The cornerstone of it is the 1967 Outer Space Treaty.

In times of conflict, France considers, as it highlighted at the OEWG's first session, that international humanitarian law is wholly applicable to space. The norms of responsible behaviour referred to in the OEWG mandate apply to peacetime with the aim of contributing to preventing any conflict in space by reducing threats.

Threats are indeed the subject: intentional acts by certain actors judged unfriendly or hostile by others. The OEWG's work is thus different from that done by the Committee on the Peaceful Uses of Outer Space (COPUOS), which works on norms and best practices to guarantee sustainable use of space.

### **II. To be established, adopted and universalized, a norm of responsible behaviour must meet several criteria**

For work drawing up norms of responsible behaviour to be fruitful, participating States must share a common understanding of both what these norms are and the appropriate criteria to determine their effectiveness.

An "irresponsible" act could be one that increases mistrust, the risk of uncontrolled escalation or the probability of misunderstandings that lead to elevated tensions between States in space. Conversely, responsible behaviour reduces these risks.

The aim of a norm is not to authorize or prohibit certain activities, but rather to propose practices and rules of behaviour that will help avoid activities leading to concerns, or that could even be considered threats, leading to an aggravation of tensions in space.<sup>1</sup>

---

<sup>1</sup> See also the 2015 report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, which indicated that: "Voluntary, non-binding norms of responsible State behaviour can reduce risks to international peace, security and stability. Accordingly, norms do not seek to limit or prohibit action that is otherwise consistent with international law. Norms reflect the expectations of the international community, set standards for responsible State behaviour and allow the international community to assess the activities and intentions of States."

Certain bases for definitions of transparency and confidence-building measures (TCBMs) from the 2013 report of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities could also be resumed in defining norms of responsible behaviour. These:

- Must be clear (using common, non-ambiguous language that builds consensus) and concrete;
- Must reduce or eliminate causes of mistrust, misunderstanding or error as to the intentions and activities of States;
- Must be verifiable, in terms of compliance and/or of violation.

We add that such norms should:

- Focus on actions and effects, not on capabilities;
- Respond to an acknowledged problem, resulting from collective actions or inactions;
- Be technical and non-political, drawing legitimacy from rational and neutral reasoning;
- Be non-discriminatory and should be universal and reciprocal;
- Be transposable into legally binding instruments;
- Be lasting and hold us to account as regards future generations.

Norms of responsible behaviour can only be drawn up by States if they share a common understanding of activities and threats. They need to identify the same problem and share the same goal of addressing it. Such norms must therefore take as much time as necessary to emerge and require constant dialogue and discussions between the actors concerned, in inclusive forums specifically designed to create the conditions to produce norms and those for their implementation, universalization and, if necessary, adaptation.

### **III. The application of certain TCBMs, such as those from the 2013 report, would create the conditions for fruitful development of norms of responsible behaviour.**

The TCBMs do not all fall within the scope of norms of responsible behaviour and therefore the OEWG mandate. Unlike norms of responsible behaviour, they can concern certain capabilities and a limited number of States for the wider good. They do not seek to stop or limit a behaviour. Rather, they involve carrying out certain actions or activities to reduce uncertainty and improve the general level of confidence between States. Certain TCBMs do or may however meet the defining criteria proposed above. It is therefore relevant to look at them within the OEWG.

The level of confidence that TCBMs allow is moreover a condition for drawing up norms of responsible behaviour. In that respect, the implementation of TCBMs would contribute to the progress of work on norms of responsible behaviour.

We therefore encourage States to implement TCBMs, particularly those contained in the aforementioned 2013 report, including:

- Improving transparency on national space doctrines, strategies and laws by publishing them and explaining them in multilateral forums;
- Providing notifications of launches of space objects based on the template of the Hague Code of Conduct;
- Creating a list of national space security focal points and channels for swift and direct communication between them;

In this respect, creating a standing mechanism for consultations on space security to track the implementation of TCBMs and serve as a forum for producing and monitoring norms of responsible behaviour could be explored. It should be open to the participation of all States based on the inclusive

model of the OEWG and within the UN. The participation of non-state actors, in accordance with adapted terms, could be considered. It could produce tangible solutions in the long term by creating a community of focal points and enabling discussions on national best practices and doctrines.

#### **IV. The work of the OEWG has identified several fields in which establishing norms of responsible behaviour is particularly useful and important.**

France is in favour of continuing work on four types of norms, which debates within the OEWG and the strategic space environment have highlighted as particularly salient and useful.

1. Intentional behaviours likely to have a high impact on the space environment:

- France is in favour of establishing a norm calling on States to abstain from intentionally or knowingly creating multiple debris, particularly with long lived debris.

2. Behaviour with a high risk of misunderstandings:

France has identified the following points as steps worthy of consideration:

- France is in favour of establishing a norm calling on States to abstain from conducting operations involving physical contact with a space object belonging to another State without the latter's explicit prior consent;
- France wishes to continue discussions around one or more norms governing proximity operations.
- France considers moreover that States should abstain from any aggressive rhetoric involving the threat of the use of force against space systems in the absence of any instance of legitimate self-defence. Such rhetoric creates tensions to the detriment of everyone's security and the sustainable and peaceful use of space.

3. Behaviour that could have direct consequences for the safety of people and property:

- Behaviour with a direct impact on the safety of people and property could be regulated, particularly given the importance of space capabilities for our lives and our societies. Such behaviour could be contrary to the principle of the use of space for the benefit of all humankind.

Destructive direct ascent anti-satellite missile testing constitutes a behaviour intentionally generating numerous debris and increases tensions and risks of misunderstandings in space, and could have direct consequences for the safety of people and goods. As such, France supports the universalization of UN General Assembly Resolution 77/41 and the national implementation by all States of its provisions. It is in favour of continuing discussions around this norm, including with the aim of transposing it in the form of a legally binding instrument./.