

UN Open-Ended Working Group on Reducing Space Threats

Third session

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Statement by the Delegation of Brazil

Topic 1: Norms, rules and principles derived from existing international legal and other normative frameworks

Thank you, Mr. Chairman.

My delegation reiterates its appreciation to you for the preparations for this session and for your skilled stewardship since the beginning of our work.

Brazil believes that this OEWG represents a unique opportunity to further the objective of preventing conflict in outer space.

That objective is well served by the inclusive and participatory nature of this body, which reflects the fact that the security and stability of outer space is a matter of critical importance to all States. This is particularly true for developing countries and aspiring spacefaring nations, which are yet far from fully enjoying the benefits to be accrued from the peaceful exploration of that environment.

Since this is our first meeting after the adoption of resolution 77/250, which established a new Group of Governmental Experts on PAROS, we would like to express our hope that the new GGE will represent an opportunity to translate the recommendations of the OEWG into the groundwork for future progress on a possible legally binding treaty. For this to happen, however, we must ensure that both fora seek to complement each other. A division of labor and genuine engagement of all States in both fora are crucial

ingredients for this to work. The experience of the GGE and OEWG on cybersecurity provides a useful reference in this regard.

Mr. Chairman,

Turning now to the first topic proposed in our indicative timetable, “Norms, rules and principles derived from existing international legal and other normative frameworks”, my delegation wishes to offer the following remarks.

Fundamentally, Brazil reaffirms that any recommendations made by the present OEWG should be based on the principles set forth by the existing legal framework, both from general international law and from the treaties and conventions specifically related to outer space.

Regarding general principles of international law, the recommendations of the OEWG should be oriented by the obligations established by the UN Charter, notably with regard to the prohibition of the threat or use of force (Article 2.4) and the right of self-defense (Article 51), as well as by principles of International Humanitarian Law, in particular those of precaution, proportionality and distinction. The OEWG should aim at clarifying how these would be translated into practice, given the specificities of the space environment. Such clarifications should contribute to the preservation of outer space as a peaceful environment by highlighting the inherent risks associated with any use of force in outer space.

In this sense, the working paper tabled by the International Committee of the Red Cross (A/AC.294/2022/WP.4) offers valid and useful considerations on the subject and could inform our recommendations in this area.

As for specific international law on Outer Space, the OEWG should recognize the validity of the legally binding principles established by the Outer Space Treaty (OST) of 1967 and build upon them. These include the principles on the exploration and use of outer space for the benefit and in the interests of all countries; the legal obligation not to place nuclear

weapons or other weapons of mass destruction in orbit; the obligation to ensure that outer space shall be free for exploration and use by all States; the responsibility of States for national space activities, whether carried out by governmental or non-governmental entities; the liability of States for damage caused by their space objects; the obligation of States to avoid harmful contamination of space and celestial bodies; and last but not least, the legal obligation of due regard.

The OEWG should also take into account the obligations set forth by derivative and supplementary treaties on Outer Space, such as those established by the 1968 Agreement on the Rescue of Astronauts, Return of Astronauts and Return of Objects Launched into Outer Space; the 1972 Liability Convention; as well as the 1976 Convention on the Registration of Space Objects. These agreements deepen the regulation of the principles established by the OST and offer a standard of regulation on specific topics that could be emulated in a norm-building in the area of Outer Space security.

The same applies to non-binding guidelines adopted in the context of the Committee on Peaceful Uses of Outer Space (COPUOS), in particular the Space Debris Mitigation Guidelines and the Long-Term Sustainability Guidelines.

Furthermore, Brazil also believes that the OEWG could benefit from analogies with other branches of international law dedicated to the regulation of common goods, such as the Law of the Sea and International Environmental Law, especially with regards to the concepts of due diligence and due regard.

The precedents from these bodies of law would help us clarify the inferred obligation not to alter the outer space environment in ways that would harm the accessibility and peaceful exploration of Outer Space. This notion is also underpinned by Article IX of the OST, by Articles 35 and 55 of the Additional Protocol I to the Geneva Conventions and by Articles I and II of the 1978 Convention on the Prohibition of Military or Hostile Use of Environmental Modification Techniques (ENMOD).

In conclusion, Mr. Chairman, Brazil believes that the OEWG should seek to reaffirm the validity of these principles and to recommend norms, rules and principles of responsible behavior that contribute to the compliance with this body of law and to reinforce its positive impact on safety and security of Outer Space. In so doing, the OEWG will hopefully lay a solid groundwork for a future binding instrument on PAROS.

Thank you, Mr. Chairman.