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Survey of the problem of discretion exercised by States in interpreting basic legal principles and norms related to safety and security in outer space

Working paper submitted by the Russian Federation[1]

1. The purpose of this working paper is to identify and define problems associated with known or potential divergence in the interpretations by States, at their own discretion (i.e., on the basis of accepted opinions), of the principles and norms of international law pertaining to safety and security in outer space. The working paper also addresses the issue of the feasibility of developing a common understanding regarding the discretion that can be exercised by States in interpreting and implementing the said principles and norms.

2. When interpreting a number of the provisions of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, as well as the Charter of the United Nations (as it fully applies to regulating outer space activities), that are vital to safety and security in outer space, States do, indeed, act at their discretion. Among such provisions are those of article IX of the Outer Space Treaty that prescribe a requirement to avoid potentially harmful interference with the space activities of other States. Developing a method that would make it possible to measure the harmful nature of interference objectively and absolutely may, in a decisive way, promote relevant agreed understanding. It would be appropriate in this context to refer to an important issue of interpreting the legal grounds for, and the modalities of, resorting, in a hypothetical case, to self-defence in accordance with Article 51 of the Charter of the United Nations, as applied to outer space. Agreeing on a sound interpretation of an international norm here is a very complicated matter considering, inter alia, that some national regulations actually replace Article 51 with a radical concept of self-defence in outer space that provides for preventive, pre-emptive and anticipatory self-defence. The substance of the problem becomes even more complex due to the fact that, under those same jurisdictions, self-defence in outer space is claimed to be a long-established norm of customary law.

[1] This working paper was made available by the Secretariat at the sixty-first session of the Committee on the Peaceful Uses of Outer Space, in the form of a conference room paper (A/AC.105/2018/CRP.17) in English and Russian only.

3. There is a noticeable trend to introduce a sort of “new principles” into political and academic lexicon to guide outer space activities, such as the “principle of freedom of action in outer space”, which drastically deviates from the concept of article I of the Outer Space Treaty. As a result of merging provisions of articles I and IX of said Treaty, references are often made to the “right of access to outer space without interference”. Politicians and experts start referring to “free access to outer space”. At the same time, the Outer Space Treaty (article I) provides for “free access” only with respect to “all areas of celestial bodies”. In this context, it is fully understandable that access implies actual physical presence. Unimpeded access to near-Earth outer space may not actually be assured due to objective reasons of congestion of certain orbits. There is no absolute freedom of access to the radio frequency spectrum, which is regulated so as to avoid harmful radiofrequency interference. Besides, unprecedented legislative actions undertaken under some jurisdictions regarding space resources cannot but create a major legal ambiguity by presenting a de facto new reading of the fundamental norm prohibiting national appropriation of outer space, including celestial bodies. And, finally, ever more references, at the political and expert levels, are made to “national and commercial (private) activities in outer space”. Such “novelty” is designed to disintegrate the understanding flowing from article VI of the Outer Space Treaty, which contains a single notion of “national activities in outer space” that includes activities of non-governmental entities. Attempts to assign entirely new meanings to well-established legal principles and norms can only complicate the problem of safety and security in outer space.

4. Outer space has not so far been a scene of discord or conflict that could lead to tensions between States with great consequences and provoke instability. Until recently, there have been no encroachments on absolute treaty obligations. Nowadays, the declining respect for international law in general and the risk of concepts and ideals of the Outer Space Treaty being challenged, questioned or unilaterally reconceptualized on the pretext that they do not reflect reality can negatively influence safety and security variables characterizing the situation in outer space, as well as put the stable and predictable interaction between States at risk.

5. The Outer Space Treaty contains quite definite commitments based on solid ethical standards designed to promote conditions of stability in outer space. But here again, the way States uphold the spirit of relevant legal provisions depends to a decisive degree on the States themselves. For instance, article III specifically provides for the obligation of States to carry on activities in the exploration and use of outer space in the interests of maintaining international peace and security and promoting international cooperation and understanding. How, then, can such an obligation correlate with the fact that, in some jurisdictions, the national regulation of outer space activities seems to take on a logic of its own by generating a combination of doctrines and operational strategies that are in contrast with fundamental norms of international law, since those doctrines and strategies provide for the right to deny other States access to outer space? It should be noted that such courses of action, which imply coercive influence on foreign space objects, are not even made conditional on extraordinary circumstances, such as the declaration of a state of war or the invocation of the right to self-defence, but rather form an integral part of space operations planning policy.

6. The examples given above show that a lot depends on political approaches and the behaviour of States, since they decide whether or not their specific actions and their national regulations correlate with international commitments. Hence, there is the need to apply, within the Committee on the Peaceful Uses of Outer Space, conscious, well-calibrated and systematic efforts in order for the States to speak in favour of overcoming political ambiguities that characterize the interpretation of international space law and its correlation with national regulation. An extremely important task to perform is to elaborate a useful approach to classifying conflict and near-conflict situations in outer space. The basic function of such activity would be to clarify a range of fundamental and ever new problems pertaining to safety and security in outer space. Common sense and pragmatic considerations should serve as

distinctive motivation guiding the work. The kind of understanding sought here is intended to contrast in a very useful and prudent way with the pursuit of egocentric approaches to dealing with conflicts of interests in outer space.

7. The national space policy of the Russian Federation provides that its national interests in outer space are to be secured using all means available under international law, including the right to self-defence in accordance with the Charter of the United Nations. At the same time, the Russian Federation has launched a major initiative to have the legal grounds for, and modalities of, resorting, in a hypothetical case, to self-defence in accordance with the Charter of the United Nations as applied to outer space considered by the Committee in an attempt to reach a comprehensive understanding on that score. Should this endeavour succeed, the arrangement would be politically and legally validated by the General Assembly and the Security Council. The value of such an arrangement as endorsed by the two bodies would be hard to overestimate. The problem may be clarified through collective reasoning, persistence and goodwill. Analytically, finding ways to address the issues of self-defence in outer space would constitute further dimension of solving the problem of ensuring safety of space operations.

8. In its working paper A/AC.105/L.294, the Russian Federation provided a useful approach to categorizing the situations that could potentially lead to conflicts of interest or a full-scale conflict in outer space. The basic and exhaustive criteria needed for describing such situations seem to be in place. The sufficiency of the proposed system of differentiation of circumstances that may lead to conflicts could well be further explored by adding descriptive precision as regards the nature, causes and consequences of events in outer space, as well as elements describing modes of reasonable behaviour of States. The broader the reliable description of different situations requiring reserved response, the more realistic the efforts to avert dangerous developments or threats to peace and security in outer space would be. In addition, said working paper features a questionnaire that the Russian Federation has drafted for potential use as the technique for gathering information and ideas so that States could share their vision.

9. The issue of clarifying the modalities of resorting to self-defence in outer space has not yet become an “opinion leader” in the Committee and does not command the attention of delegations, although for different reasons. Some think that the issue itself conveys a negative connotation and prejudices the ethics of the exploration and use of outer space. Taking an unemotional approach and interpreting this topic in a pragmatic way could prove to be the right thing to do. Still, others, while being fully aware of the need to undertake such an intellectual exercise, refrain from addressing this issue due to the political sensitivities involved. If there is no political sentiment in the Committee to support the initiative to jointly agree on a common interpretation of self-defence in outer space, the Russian Federation will not argue its case forever. If States choose to defeat this sensible proposal, that would be their decision. The fact that some States prefer to adhere to a very specific concept of self-defence in outer space means that the Russian Federation has no choice other than to provide for the development of methods and means of responding to existing and forecasted threats, premising its position exclusively on its own understanding of the current situation in outer space and assessment of the way it develops.

10. The articles on the responsibility of States for internationally wrongful acts developed by the International Law Commission and taken note of by the General Assembly in 2001 (in its resolution 56/83) confirm the de facto legal accuracy of distinguishing the situation when there are legal provisions for using the right to self-defence on the one hand and the situation when adequate response to the use of force is required on the other. According to these articles, which are very important for developing the concept of responsibility in the system of international law and ensuring effective regulation of the corresponding principles and norms, the wrongfulness of an act is precluded if an act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations or a countermeasure taken against a State that is responsible for an internationally

wrongful act. At the same time, it is envisaged that the countermeasure shall not affect the obligation to refrain from the threat or use of force as laid down in the Charter of the United Nations, and must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question. It is also specified that a State may take such urgent countermeasures as are necessary to preserve its rights. Necessity may serve as a ground for not considering a particular act as a wrongful one and as not being in conformity with an international obligation, if such an act, firstly, is the only way for the State to safeguard an essential interest against a grave and imminent peril and, secondly, does not seriously impair an essential interest of a State or States in relation to which an international obligation exists, or of the international community as a whole.

11. It should be observed that the term and the concept of a "wrongful act in outer space" are not in active use. Cases when a State was actually accused of having committed a wrongful act in outer space cannot be readily cited. Of course, everybody understands that it would certainly be unlawful conduct for a State party to the Outer Space Treaty to orbit nuclear weapons. It would also be wrongful conduct to establish military bases, installations and fortifications on the Moon and other celestial bodies. The problem is that not all legal provisions are exhaustively explicit in stating what correct behaviour is and what should be treated as a wrongful act. Perhaps it would be easy to identify a rather large-scale wrongful infringement of interests in outer space. It is much more difficult to measure "harmful interference" in an objective way and using absolute indicators. This term covers all situations. Except for the domain of telecommunications, there are no explicit procedures to protect outer space activities from harmful interference if that interference does not produce a damaging effect requiring the 1972 Convention on International Liability for Damage Caused by Space Objects to come into play. Indeed, article IX of the Outer Space Treaty is more of a general nature. In that light, can States find a suitable way to improve the provisions of this article?

12. Finding a precise method to be used for determining, in an objective way, what constitutes harmful interference does not seem a relatively easy thing to do. The prospects of establishing general standards (criteria) in accordance with which the notion of harm should be ascertained are subject to yet one more difficulty. And the difficulty is that article IX of the Outer Space Treaty targets the problem of potentially harmful interference with activities of other States or any activities "in the peaceful exploration and use of outer space". Unfortunately, international law has not been helpful in terms of legally defining what "peaceful" really is in this particular context. Judging by the discourse in academic circles, the fundamental choice here seems to be between two options: one is to associate peaceful uses of outer space with its non-military uses, the other equates peaceful uses of outer space with non-aggressive uses of outer space. The efforts that are being undertaken, at the initiative of Brazil and other States, to formulate — within the Scientific and Technical Subcommittee and within the framework of drafting the set of guidelines for the long-term sustainability of outer space activities — States' political commitment to use outer space solely for peaceful purposes have proved to be of great practical use. Agreement on this topic would contribute to a more practical perception of the scope of the norm contained in article IX of the Outer Space Treaty and the way this norm should operate. The Russian Federation was among those States that added a realistic dimension to the evolving notion of conducting activities in the exploration and use of outer space solely for peaceful purposes. There seems to be an understanding now that the concept of peace in outer space should not rule out the use of space technologies in the interests of monitoring activities as well as a number of space applications supporting national and international security. Such a shift in the approaches towards the consideration of actual circumstances enhances confidence in the endeavour and makes it possible to gain a broader view of the practical aspects requiring attention. This topic relates to the separate segment of the regulation developed under the agreements between the Union of Soviet Socialist Republics and the United States of America and between the Russian Federation and the United States in the field of nuclear arms control. They include the norm on non-interference

with the national technical means of verification. The parties also committed themselves to using those means in a manner consistent with generally accepted principles of international law. The intent here has been to prevent interference with the operation of intelligence and early warning space systems. The same commitment is contained in the 1990 Treaty on Conventional Armed Forces in Europe.

13. In fact, there are more aspects to the problem of interpreting article IX of the Outer Space Treaty. The provisions of this article are based on the idea of holding consultations to resolve harmful interference issues. However, this article does not deal with a situation whereby the consultations would either not be held or would simply fail to achieve results. The article refers to interference with the activities in the peaceful exploration and use of outer space. In that light, from a formal standpoint, a State seems to be free not to initiate consultations with another State to resolve a possible interference issue if it expects its own planned activity or experiment to cause potential harmful interference with that other State's activities which, according to its own judgment, do not represent "activities in the peaceful exploration and use of outer space". Still, any State may make a proposal to any other State to hold consultations if it considers that other State's planned activity or experiment to be capable of causing potentially harmful interference with respect to unspecified "activities in the peaceful exploration and use of outer space", which essentially means any such activities. Theoretically, the State planning or conducting activities or experiments may refuse the holding of consultations if it is of the view that the activities that may supposedly be subject to potentially harmful effects do not seem to be "peaceful". In any case, the Treaty does not make it obligatory to grant the request for consultations.

14. Maritime powers have been relatively successful in agreeing on what constitutes dangerous types of activities that should be avoided on the high seas and in the air space above them. The relevant agreements provide for ways of exercising caution and self-restraint and, in general, displaying courteous behaviour. These regulations are intended to ensure that States do not cross critical thresholds. It might be useful to consider such approaches as part of the Committee's discussion of issues related to safety and security in outer space, reserving here, as an option, the possibility of using appropriate competencies of the Inter-Agency Space Debris Coordination Committee. The development of similar regulations for outer space might prove to be a sensible thing to do. For example, the Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America on the Prevention of Incidents on and over the High Seas of 25 May 1972 contains an understanding on measures directed at improving the safety of the ships of their respective armed forces on the high seas. In particular, it provides that:

(a) In all cases, ships operating in proximity to each other shall remain well clear to avoid risk of collision. (Applied to space operations, a similar understanding could be that in all cases when satellites operate in proximity of each other, operators should apply an orbital maintenance strategy that would provide for collision avoidance.);

(b) Ships meeting or operating in the vicinity of a formation of the other party shall avoid manoeuvring in a manner which would hinder the evolutions of the formation. (Applied to space operations, a similar understanding could be that the manoeuvring operations of satellites of a State that operate in the vicinity of an existing satellite formation (group of satellites performing coordinated flight) under the jurisdiction and/or control of another State or other States should be coordinated with the operations of the formation.);

(c) Formations shall not conduct manoeuvres through areas of heavy traffic where internationally recognized traffic separation schemes are in effect. (Applied to space operations, a similar understanding could be that orbital altitude separation for extra-large constellations should be considered as one of the possible options to avoid collisions of satellites of one and the same constellation as well as between satellites belonging to different constellations.);

(d) Ships engaged in surveillance of other ships shall stay at a distance which avoids the risk of collision and shall also avoid executing manoeuvres embarrassing or endangering the ships under surveillance. A surveillant shall take positive early action so as not to embarrass or endanger ships under surveillance. (Applied to space operations, a similar understanding could be that satellites conducting on-orbit an inspection mission in the close proximity of a non-cooperative satellite under inspection should operate at a distance which makes it possible not to exceed the acceptable collision probability threshold.);

(e) Ships of the parties shall not simulate attacks on, and shall not launch any object in the direction of, passing ships of the other party. (Applied to space operations, a similar understanding could be that satellites conducting an on-orbit inspection mission should avoid such close proximity operations in the immediate vicinity of a non-cooperative functional foreign satellite under inspection that could be interpreted by the operator of that non-cooperative satellite as a threatening (menacing) factor or a very determined attempt to cause actual harm.).

15. It is known that, for the purposes of conducting space surveillance and on-orbit inspection activities, States occasionally let their space objects pass by foreign space objects. Some States do this on an almost regular basis. In most cases such operations do not produce negative outcomes. Nevertheless, they require attention, given that there are cases where proximity operations give rise to grievances or provoke tensions. It should be noted that, quite often, double standards are applied to assess such operations. The analysis or characterization by a State of another State's behaviour most often does not reflect the manner in which that State judges its own behaviour of essentially the same kind. Such double standards may result in a situation where events develop according to a threatening scenario. It would be appropriate to expect that changes for the better here would become possible if relations between States became more trusting. Since there are no international limitations with regard to on-orbit inspection activities, the Russian Federation, guided by the need to forestall actions which may negatively affect the operational situation, has drafted and proposed, for inclusion in the set of guidelines for the long-term sustainability of outer space activities, a guideline dedicated to the conduct of close-proximity operations near a foreign space object with the necessary precautions. The functional approach that characterizes that draft guideline could lead to the emergence of a viable method of identifying ways of making such activities in outer space safer.

16. Corporate space actors would certainly like to secure their interests in outer space, and that is understandable. It is no secret that private operators make use of methods and techniques aimed at precluding harm to their space assets. They manage to adequately control their own activities to mitigate harmful interference with their space objects. Still, there are indications that there would be attempts to make private space entities perform greater self-regulatory roles and, thus, create prerequisites for commercial interests to start to become nearly independent in outer space. In this context, private space actors might as well conclude that they are entitled to resort, where needed, to coercive technical methods with respect to space objects other than their own. That is precisely why the concept of self-defence in outer space, as enlarged beyond any reasonable limits under some jurisdictions to include associations and precedents that have nothing to do with Article 51 of the Charter of the United Nations, may result in bad things happening in outer space. The interchangeable criteria used for substantiating the right to self-defence in outer space ("protection of rights" serves as a key criterion for exercising self-defence) may cause irrational actions of all kinds. If States abstract themselves from the need to follow Article 51 of the Charter of the United Nations, self-defence in space may cease to be a State-level issue. Corporate space actors may misperceive political guidelines arising from the expanded self-defence doctrine. It is unfortunate that today's realities do, in fact, provoke such worst-case thinking. That is why it would be necessary to categorize measures that private operators may take to preclude harmful interference, subject to agreement from the relevant States. It may not necessarily be an ad hoc

authorization in each particular case. Agreement could be expressed in the form of standing operating procedures that would guide private space actors. Such authorization procedures should, in the absence of international normative regulation, stem from the prerogatives of States under article VI of the Outer Space Treaty. The best option would be to seek international regulation here.

17. When a space object experiences harmful interference, it is important to register precisely what is happening and determine the cause of the harmful interference, identify the likely source(s) of harmful interference and carefully monitor the situation as it may constantly and rapidly change (in terms of intensity and nature of the harmful interference). The operator of a space object should take immediate action to ensure its continued safe and secure operation. An immediate response (parallel to the initiation of consultations) would obviously include: performance of orbital manoeuvres to avoid possible collisions; performance of attitude manoeuvres to avoid impact caused by different kinds of directed emission; and use of various technical solutions in the design of a satellite for the purpose of protecting its systems.

18. If harmful interference (the source of which is clearly identified) turns out to be of a persistent nature, and consultations, when requested, either are rejected or fail, the procedure for determining further action should provide for decision-making at the level of the State concerned. A combination of adequate protection measures could include flagging warnings and encouragement to act constructively. For example, the use of barrage jamming may be considered as an urgent countermeasure to safeguard the very ability of the satellite to remain under control (this means securing an essential interest in accordance with the articles on responsibility of States developed by the International Law Commission) and to continue its mission in a safe and secure manner with respect to other satellites (this means considering the criteria contained in said articles regarding the avoidance of serious impairment of an essential interest of a State or States in relation to which an international obligation exists, or of the international community as a whole). It is very important that States, in responding to persistent harmful interference, rely on restrained actions and do not use means and/or methods that are either intended or likely to cause physical interference with, or physical harm to, the source of harmful interference. It is necessary to ensure that such means and methods are appropriate for the specific situation which is to remain manageable. It should not be aggravated to the point of becoming a threatening or menacing sequence of events that could compromise safety and security in outer space. In this particular context, a State, having made public the fact of a protracted harmful interference in the operation of its space object, would reasonably be entitled to respond by symmetrical and/or asymmetrical countermeasures to safeguard its rights, subject to the requirements outlined in this paragraph.

19. The comments provided by the United States in Conference on Disarmament document CD/1998, of 3 September 2014, regarding the definition of the term “use of force”, as featured in the draft treaty on the prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects between the Russian Federation and China, may, in a way, serve analytical purposes in the context of this working paper. As it is known, the draft treaty denotes the “use of force” as any action intended to inflict damage on an outer space object under the jurisdiction and/or control of other States, while the term “threat of force” is proposed to be understood as the clear expression in written, oral or any other form of the intention to commit such an action. The United States is of the view that the concept of “use of force” or “threat of force” is not explicitly defined under existing international law and that attempts to negotiate an agreed definition for the purposes of that particular treaty would likely prove impossible. Nevertheless, the United States declares in the same context that it would not support an attempt to define these concepts for purposes of that treaty, given that existing international law, as reflected in Article 2, paragraph 4, of the Charter of the United Nations, already prohibits the use of force or threat of force against another State’s outer space objects, not just parties to any such treaty. The logic of such reasoning merits special attention, since all these points combined would mean that the use of force in outer space is

prohibited, though not quite explicitly. The United States goes on to note that the definition of “use of force” or “threat of force” under article I of the draft treaty is limited to actions “intended” to inflict damage, while the United States does not believe that an action must be specifically “intended” to inflict damage in order to constitute a use of force under existing international law. If what is implied here is the possibility of use of force authorized by the Security Council under Chapter VII of the Charter of the United Nations, of course, without specific intention to inflict harm, then it is one thing. However, the draft treaty does not prejudice the Charter of the United Nations. Its objective is to propose criteria for ascertaining actions that represent the use of force or threat of force, specifically, as applied to outer space. It could be argued that the use or threat of force should not necessarily be associated with the intent to inflict (cause) damage. It would, nevertheless, be practically impossible to imagine a situation when the use of force with respect to a space object would not result in any harm (damage) whatsoever, irrespective of whether there was an intent to do harm or not. Leaving the criterion of “damage” aside, it would be absolutely correct to say that the “use of force” implies intentional actions, while “threat of force” denotes a declared or demonstrated intent to affect something by force. As part of its specific regulation of self-defence, the United States makes the use of the right to self-defence in outer space conditional on a “hostile act” and/or “hostile intent”. The difference between the two concepts is that the Russian Federation, together with China, believes that it is important to associate the threat of force with an expressed or demonstrated intent to use force, while the other approach makes the demonstration or presumption of hostile intent a core criterion. The two approaches also differ from each other in the sense that the Russian Federation and China propose criteria in the context of the norm prohibiting the use or threat of force while, in the second case, criteria serve to substantiate the resort to self-defence. Implementation of the concepts of preventive, pre-emptive and anticipatory self-defence as a reaction to “hostile intent” would be totally abstracted from the criteria provided for in Article 51 of the Charter of the United Nations. Disregard for the factor of clearly expressed or manifested intention to use force would make it impossible to delineate events that may or may not be considered as being in direct relation to the use or threat of force, and make a separate case for unintentional threats (technical malfunctions and/or human errors may negatively affect the safety of space operations and, taken together, produce the effect of use or threat of force).

20. If some States refer to a hostile act or hostile intent as constituting grounds for exercising self-defence in outer space, then it would, at least, be necessary to try to understand what guidance there could be to establish clear hostile intent sufficient to take a decision to act by way of self-defence, as conceptualized and made operative by those States. In fact, defining an overtly hostile act seems to be easier than defining what constitutes being predisposed towards committing a hostile act. The very impossibility, for objective reasons, of laying down a clear definition of hostile intent, especially as applied to outer space, may only lead to unprecedented subjectivity in interpretations and, hence, a dramatic increase in the probability of conflicts. Even the most regularized understanding as regards intent may prove to be not all that rewarding, considering that relevant features which shape the evaluative context may rapidly change owing to the conditions of the outer space environment. Said subjectivity factor may prove to be fatally conducive to conflict, considering the unique conditions of outer space near Earth (frontier-free environment, direct accessibility of any space object as a potential target, specific dynamics of objects’ motion, complexity of the task of ensuring near-to-continuous monitoring of all objects dispersed in the expanse of outer space).

21. At present, the expert community is paying increased attention to the issues of the applicability of international humanitarian law to military space activities. Many institutions, including the specialized international intergovernmental organization of the United Nations system, show an interest in assessing the implications of this branch of international law for space activities. Generally speaking, the “popularization” of this topic is quite an ambiguous thing. The new research trend raises concern because, whichever way one looks at it, it encourages the perception

that warfare in outer space is accepted as an eventuality. Somehow, the discussions have taken this turn at a time when, more and more often, rash political statements are being made on the possibility of "victorious wars" in outer space. Unfortunately, such statements do become policy factors. Trying to take a positive view of this topic, one may, of course, presume that humanitarian law, as it directs attention to the moral and ethical factors and circumstances related to an armed conflict (war) could limit, at least to a certain extent, military actions in outer space by urging States to refrain from employing excessive force that would be redundant in the light of the aims pursued. It seems necessary to take into account that the factor of the presence or absence of weapons in outer space does not play a decisive role in this particular context, because the Geneva Conventions of 12 August 1949 provide that the law of war applies to differences that arise among States and lead to the intervention of armed forces (not the use of weapons as such). It is obvious that, through the use of military space systems that are part of armed forces, States provide for space monitoring and support the theatre of military operations, and precisely this second function may serve the purpose of performing ground operations subject to the principles of discriminate and proportional actions and protection of civilians and civil infrastructure. There is an opinion that civilian entities conducting space activities should not be associated with a "belligerent party", this being a manifestation of a discriminate approach. Still, are things all that simple and clear? The Russian Federation would like to clarify this issue within the Committee, engaging the expertise of other bodies and organizations of the United Nations system. There is a particular interest in discussion with United States negotiating partners. Why particularly with them? Because the United States affirmed in its national documents that it complies with the principles of the law of war during any conflicts and military operations other than war, including as applied to outer space. The Russian Federation has not made special statements regarding the "space dimension" of international humanitarian law. It would be worth attempting to reach, through discussions, a systematic common understanding of all relevant aspects of the topic. Ensuring that actions in outer space during a conflict are discriminate, as well as a situation whereby civil infrastructure in outer space would be immune from attacks, is far from easy considering the expanded concept of self-defence referred to above. The regulations in force in the United States provide that self-defence may and should be invoked to defend the nation, its forces, national commercial assets, and persons and their property, and, in general, in cases of "infringements on United States rights". Then there is every reason to ask the question: if the right to self-defence is being reserved with regard to various cases where there might be displeasure or concern over real or even hypothetical events in outer space, how then should the other party involved in the conflict of interests ("hostile force") "target" its decision in response, or, rather, nominate targets for retaliation? Self-restraint can hardly function in such a context. If there is a real desire within the expert community and at the political level to clarify the issue of applicability of humanitarian law to outer space, it would be necessary to analyse such topics as civilian augmentations of military functions and the potential role of proxy actors. In this case, due to the situation that has evolved, not only the Russian Federation, but also many other States have to think about borrowing the understanding contained in the regulations adopted in the United States providing that the category of "hostile force" may, upon the decision of an authorized entity, include, apart from military force, any civilian or paramilitary force. Assessing the very possibility of employing, under certain circumstances, "discriminate methods" in outer space, it would be useful to analyse the relevant aspects of registration of space objects. The registration information that the Russian Federation provides to the United Nations indicates, where relevant, that a specific space object has been launched in the interest of the Ministry of Defence of the Russian Federation. That practice serves the goals of confidence-building in space activities. In a number of cases, the military purpose or military functions of specific space objects have been indicated by France, Italy and the United Kingdom of Great Britain and Northern Ireland. Canada has referred to the Department of National Defence as owner or operator of one of the space objects registered by Canada. In relation to both civil and military space objects, the United States uses the

uniform formulation: “Spacecraft engaged in practical applications and uses of space technology such as weather or communications”. Does the existence of a practice whereby the military purpose (military functions) of relevant space objects is (are) not indicated put in doubt the possibility of prescribing policies and procedures for determining actions to take (responses to give)? It is a challenging task to ascertain how humanitarian law and the regulatory aspects of space activities correlate, as well as to develop clear and unambiguous guidance here. Nevertheless, it would be worth trying.

22. Member States might have questions as to why the topics dealt with in this working paper are being proposed for review within the Committee. The answer is simple and, as it seems, logical: because harmful interference with the activities of States in the exploration and use of outer space may serve as a catalyst for potential conflict and, moreover, as formal grounds for resorting, under some jurisdictions, to the right to self-defence. Article IX of the Outer Space Treaty is devoid of specifications as regards both the description of “harmful interference” notion and quantitative characteristics of harmful interference. Apparently this notion may cover not only harmful radiofrequency interference (the remit of the International Telecommunication Union), but also harmful interference caused as a result of the following: experiments providing for a considerable alteration of the natural conditions of the space environment; operations influencing the function of equipment aboard space objects (for example, blocking or limiting the field of view of on-board optical or radio equipment); inspection operations which may lead to the threat of collision of space objects under the jurisdiction and control of different States; and operations providing for a non-coordinated physical contact of a space object under the jurisdiction and control of one State with a space object under the jurisdiction and control of another State. Thus, the notion of “harmful interference” encompasses a wide spectrum of situations that may lead to conflict. These very reasons made the Russian Federation submit relevant draft guidelines for the long-term sustainability of outer space activities, on which decisions are yet to be taken. Detailed consideration of the ways and means of resolving situations related to various forms of harmful interference with the activities in the exploration and use of outer space is a major task of the Committee. As long ago as 2014, the Committee noted the importance of reviewing the norms of international law relevant to preserving outer space for peaceful purposes. Nevertheless, this decision of the Committee, unfortunately, remains unrealized. Member States should be aware that this failure to act on the part of the Committee is very regretful, especially against the background of the ever-growing ambitions and activity of different educational and other organizations precisely in those areas where the status and unique role of the Committee should be fully and effectively visible.