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**Presentation to the  
Open-Ended Working Group (OEWG) on Reducing Space Threats Through  
Norms, Rules and Principles of Responsible Behaviours**

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Chairperson, distinguished representatives and delegates, officials and observers,

It is a great honour to be invited to address the Open-Ended Working Group, and to be accorded the opportunity to contribute to the first substantive agenda item 6(a) on “taking stock of the existing international legal and other normative frameworks concerning threats arising from State behaviours with respect to outer space.”

I am humbled to represent the McGill Centre for Research in Air and Space Law, the research arm of the Institute of Air and Space Law, which for over seven decades has been at the forefront of teaching, conducting research and the dissemination of knowledge of in space law, including on topics relating to arms control and disarmament in outer space, and the peaceful and military uses of outer space.

My colleague Professor Ram Jakhu, Acting Director of the McGill Institute sends his regrets for not being able to deliver remarks in person. We hope our small contribution will aid Member States in developing norms, rules and principles of responsible behaviour.

Such norms, rules and principles, when agreed and adopted by consensus, will go a long way to strengthening existing international law as they apply to outer space, building greater confidence and transparency in outer space, as well as maintain safety, security and sustainability of outer space activities for peaceful purposes and for the benefit of all space actors and the entire humankind.

We have been asked to address the question what provisions of “**existing international law are applicable to the non-weaponisation of outer space and the regulation of military activities in outer space and what are the gaps**”.

It must be kept in mind that even in the absence of a legally binding instrument on the prevention of an arms race in outer space, even in the absence of a binding instrument on the prevention of the placement of weapons in outer space and of the threat or use of force in outer space, from space against Earth, and from Earth against objects in outer space,<sup>1</sup> there are binding laws and legal principles that place constraints on States with regard to the use or testing of weapons and other military space activities.

The following remarks build on the written statement of the Institute that were submitted to the Working Group on 4 May 2022, which is available on the website.

Our remarks will be centred around the four following points:

- 1) International law, including the United Nations Charter, is applicable and relevant to the peaceful exploration and use of outer space;
- 2) International law is applicable and relevant to all space activities, including military space activities and the weaponisation of outer space;
- 3) International law must be observed in good faith at all times, regardless of the nature of space activities; and
- 4) Existing international law as it applies to outer space must be interpreted and clarified in accordance with the unique legal and physical nature of outer space

**Firstly, we echo the submissions of other delegations, including the [International Committee of the Red Cross](#), that space activities “do not occur in a legal vacuum but are constrained by existing international law, notably the UN Charter and the Outer Space Treaty”.**

The Outer Space Treaty contains specific prohibitions relating to certain weapons and military activities in outer space and on the Moon and other celestial bodies. These include:

- The prohibition of objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installation of such weapons on celestial bodies, or stationing of such weapons in any other manner; and
- The complete prohibition on the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies.

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<sup>1</sup> UNGA, *Further practical measures for the prevention of an arms race in outer space*, UN Doc A/RES/76/230 (2021), para 5

These two fundamental principles underpinning the regime governing the weaponisation of outer space and military activities in outer space remains relevant to this day. It is no surprise that the Outer Space Treaty has been called “the most important arms control development since the Limited Test Ban Treaty of 1963” by the former US President Johnson.

Article I of the Outer Space Treaty provides the “exploration and use of outer space, including the moon and other celestial bodies” must be “carried out for the benefit and in the interests of all countries”.

Furthermore, Article III of the Outer Space Treaty provides that space activities, must be conducted “in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding”.

Thus, the legality of any action of any State that has a bearing on the weaponisation of outer space, including the testing and using of anti-satellite weapons, and any military space activity<sup>2</sup> must be assessed in accordance with norms specified in the Outer Space Treaty, and in accordance with general international law.

In recognition of the unique domain of outer space, and the unique nature of space applications, States agreed on certain fundamental principles that underpin all space activities. Specifically, the Outer Space Treaty provides that:

- i) States must have due regard to the corresponding interests of other States when conducting space activities (Article IX);
- ii) States must undertake international consultation with other States before proceeding with any space activity which is expected to cause potentially harmful interference with the space activities of other States (Article IX);
- iii) States have the right to request consultation regarding space activity planned by another State that “would cause potentially harmful interference with activities in the peaceful exploration and use of outer space” (Article IX);
- iv) States should “inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities” (Article XI).

My dear colleague Professor Setsuko Aoki will elaborate more on the content and importance of the principle of due regard shortly, and I defer to her expert knowledge on that principle.

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<sup>2</sup> “Military space activity” is used to refer to activities that are broader than “military activities *in* outer space”, and denotes also military activities that have an impact or bearing on space activities, including activities that are conducting in outer space, toward outer space, or even conducted on Earth, such as TT&C.

Suffice to say, the aforementioned obligations attach to the freedom of the peaceful exploration and use of outer space of all States, regardless of whether such activities are military or non-military in nature, and regardless of whether such activities are performed by governmental or non-governmental entities.

Placed in the context of the concern of the weaponisation of outer space, the above principles apply regardless of whether a weapon is space-based, terrestrially based, or employs a method and means of disruption or destruction that is facilitated through non-kinetic means or cyber means. Similarly, the above principles apply to military activities in outer space, directed at outer space, or from outer space.

Indeed, such fundamental principles of general international law, international space law and international humanitarian law would constrain the testing and use of any weapons or methods or means of war that exist today, that are under development or that may come into being in the future.

Honourable Chairperson, there are too many provisions of international law that have direct applicability to the weaponisation of outer space and military space activities. Due to the constraints of time, I will allude to two important ones.

In our view, the testing and use of any chemical, biological or nuclear weapon in outer space, including on the Moon and other celestial bodies, is prohibited under existing international law flowing from specific treaties such as the Chemical Weapons Convention and the Biological Weapons Convention.

From the perspective of protection of environment, we should keep in mind that the Environmental Modification Convention prohibits “military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury”.

Contrary to assertions that the Outer Space Treaty and other UN space law treaties are outdated, there is consensus among States even today that they are still relevant and applicable to accommodate new developments, new space activities and applications, and meet emerging new challenges.

Indeed, as mentioned, various other international treaties and customary international law principles would constrain space weaponisation and military uses of outer space.

**Secondly, we underline that under international space law, there is no distinct made between military and non-military activities.**

As States have expressed during the negotiations and drafting of the Outer Space Treaty, it is impossible to make a clear-cut demarcation line between the military uses of outer space or the non-military uses of outer space.

What is important is not whether activities are military or non-military, but whether or not certain activities are “consistent with the UN Charter and other obligations of law”.<sup>3</sup> Thus, regardless of the military or strategic nature of a space activity, they must adhere to and be conducted in accordance with the fundamental principles of international space law, including the UN Charter.

**Thirdly, having outlined the important space law provisions that constrain the testing and use of space weapons and military space activities,** we wish to underline that international obligations must be observed and interpreted in good faith.

The principle of good faith is itself a fundamental principle of international law, and underpins peaceful relations between States and is the root of international peace and security. As the International Court of Justice pronounced in the *Nuclear Tests* case,

Trust and confidence are inherent in international cooperation, in particular in an age when this co-operation in many fields is becoming increasingly essential.

Without prejudice to the specific body of international humanitarian law that applies in the event of an armed conflict, obligations flowing from the UN space law treaties apply at all times and must be observed in good faith at all times.

Having consented to the Outer Space Treaty and other UN space law treaties, States cannot simply disregard the obligations that characterise and condition activities in relation to the weaponisation of outer space and military activities in outer space. The obligation to cooperate, have due regard and enjoy shared trusteeship of outer space which is a global commons and its natural resources necessitates good faith on all members of the international community.

If States do not fulfil in good faith binding obligations under existing international treaties, one wonders how they can be expected to do so with respect to new norms, rules and principles the international community aspires to develop?

This brings me to my final point and that is, **international law as it applies to the outer space peaceful exploration and use of outer space must be interpreted and clarified in accordance with the unique legal and physical nature of outer space.**

In various written submissions of States and stakeholders to the Group, it has been affirmed that international law applies to outer space. However, how international law applies to this unique environment and the special nature of space activities and applications is different from other domains on Earth.

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<sup>3</sup> UNGA, *First Committee, 1289<sup>th</sup> Meeting*, UN Doc A/C.1/PV.1289 (1962).

Dear Chairperson, we submit that the clarification of how existing international space law and public international law apply to the weaponisation of outer space and military activities in outer space is timely and vital.

The environment of outer space and celestial bodies is vastly different from terrestrial contexts, and the exploration and use of outer space is faced with many unforeseen technical challenges, economic costs and societal and environmental impacts never before encountered by States and space operators.

Therefore, international law as it applies to outer space must be clarified and restated bearing consideration the unique and physical characteristics of outer space.

Though we understand the UN Charter applies to outer space, what does it mean to conduct space activities in accordance with, for instance, the prohibition on the threat or use of force?

What does it mean to carry on space activities in accordance with the principles of non-intervention?

How does the inherent right of self-defence, encapsulated under Article 2(4) of the Charter, apply in the context of outer space?

What does “armed attack” mean in space, when it is possible that States may perceive an “attack” as involving non-kinetic means and methods of causing damage or harm? Could, for instance, a State unilaterally perceive the duration and intensity of a rendezvous & proximity operation or the spoofing of electromagnetic communications signals as amounting to an armed attack?

The clarification of binding legal norms will have direct relevance to many of the issues under consideration by the Group relating to identifying and reducing space threats.

The lack of proper interpretation and clarification of several key provisions of existing international law highlight the gaps in adequate regulation of weaponisation of outer space and military activities in outer space.

In this regard, we at the McGill Centre together with a consortium of international partner institutions have been developing the McGill Manual on International Law Applicable to Military Uses of Outer Space. Select rules of the McGill Manual are annexed to our written submission for the benefit of the Working Group, while the Manual and detailed commentaries of fundamental principles of international law as they apply to outer space will be available in the course of 2022.

We recommend that efforts for the clarification and restatement of international law be undertaken and continuously carried out. An international and independent group of experts should be convened for this specific purpose. Having extensive experience and knowledge in this regard, we will be glad to participate in this group if invited.

**To conclude**, I would like to express my sincere gratitude to the Chairperson for his foresight and openness to invite civil society institutions to contribute to the pressing discussions of the Working Group on Space Threats.

Chairperson, we reiterate that principles of existing international law are applicable to all space activities, including military space activities, and all testing or use of weapons must be consistent with existing international rules and principles, including the principle of due regard, the obligation to undertake consultation and right to request consultation in the possibility of causing harmful interference.

We underline that existing international law as it applies to outer space must be interpreted and clarified in accordance with the unique legal and physical nature of outer space.

I end with the wise words of US Ambassador Goldberg, who stated in 1966 that it is a “matter of the utmost necessity that the space age should continue to evolve in an environment of peace, law and co-operation”, and that “political conflict on earth need not inhibit the development of a meaningful legal regime governing the activities of men and States elsewhere”.<sup>3</sup>

I thank you for your attention.