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Russian assessment of the initiative and actions of the European Union to advance its draft code of conduct for outer space activities

Working paper submitted by the Russian Federation¹

1. The delegation of the Russian Federation considers it appropriate to outline views concerning the essential aspects of the situation that is developing both within and outside the Committee on the Peaceful Uses of Outer Space of the United Nations in connection with the decision by the European Union to sidestep the acknowledged competence and authoritative opinion of the Committee and to impose upon the international community the negotiation process on the draft code of conduct for outer space activities.
2. The Russian delegation believes that the authors and co-sponsors are aspiring to negotiate in their own way and push through the concept of reaching the arrangements on space security that they would prefer. This scheme is executed at a time of the development of the regulatory framework for enhancing the safety of space operations in the context of obtaining a common understanding of the ways and means of ensuring the long-term sustainability of outer space activities, as consistent with the collective decision of the States members of the Committee, supported by the United Nations General Assembly.
3. The process of consultations on the draft code of conduct in space which was organized outside the United Nations and lasted for several years has not proved

¹ This working paper contains the text of the statement made by the delegation of the Russian Federation at the plenary session on 11 June 2015, during the fifty-eighth session of the Committee on the Peaceful Uses of Outer Space, in connection with the initiative and actions of the European Union to advance its draft code of conduct for outer space activities. The text was first made available, in English and Russian, as a conference room paper at the fifty-eighth session of the Committee (A/AC.105/2015/CRP.19).



successful. Such a situation arose not least because of the corporate style of behaviour of the authors and co-sponsors of the document, who demonstrated their reluctance to act in a way that would be motivated by the logics of partnership, responsibly manage the process of consultations, take the observations of the invited participants into consideration and clear up their concerns. Indeed, that is why the draft code, in fact, still remains essentially a “group manifest”.

4. The consultations in Kiev, Bangkok and Luxembourg vividly illustrated that it was worthless to expect the authors to be receptive to the point of view of the invited participants due to the fact that the motivation and the strategy which stipulated the contents and the way the draft code was promoted came to be determined not only by the authors but also, and increasingly, by the co-sponsors, who, as practice shows, do not allow for a compromise in achieving their tasks. Meanwhile, the goals are clear — promoting concepts that would be premised on the replacement of basic norms of international law. Unauthorized suprajurisdictional actions against foreign space objects on rather indefinite motives are still a basic constant fixture of the draft code. The considerations given in the text of the draft code are mostly absolute fallacies and meant as a pretext for variability of the use of force.

5. It is quite possible to regulate exceptional cases where an emergency intervention in the physical state and the process of orbital flight of a space object may be required for the purposes of humanitarian assistance missions and stay within legal boundaries at the same time, as confirmed by specific proposals made in the context of developing guidelines for ensuring the long-term sustainability of outer space activities. As for the goal to mitigate space debris, it would be at least unwise to associate its implementation with in-orbit destruction of space objects. Worthy and exhaustive proposals regarding possible cases where it would be necessary to remove an object from the orbit in order to meet the above-mentioned and other challenges have been introduced to the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space for consideration and are awaiting an interested and attentive attitude.

6. Before advancing a position on the right to self-defence in any international regulatory instrument, it would be important to achieve a shared understanding in the framework of the Committee on the Peaceful Uses of Outer Space concerning the legal basis and modalities for exercising such right as applied to outer space. Justification of actions aimed at destroying or damaging foreign space objects on the grounds of undefined “imperative safety considerations”, as implied by the draft code, should be considered totally reckless. Such focus on actions that can superinduce escalatory and dramatic aspects into space operations should, at least, cause concern. The “creativity” demonstrated by the drafters and co-sponsors of the draft code in their approaches to ensuring security in outer space can come at a cost to the international community. Separate adoption of the code, with its emphasis on conflict interactions in outer space, would mean reformatting space policy and setting a long-term negative trend in regulating the safety and security of space activities. It is clear that, owing to a new context, it would be virtually impossible to form a strategic consensus in favour of efficiency of this regulation. It would also be problematical to achieve a state of relations characterized by a greater degree of trust and a high level of mutual responsibility.

7. Analysis of other provisions of the draft code proves that the real regulation model has not been worked out in a serious way. In fact, the draft code merely fixates some of the functions of ensuring the safety of outer space operations and does nothing but reiterate recommendations agreed within the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities without imparting the required regulatory qualities to them. In general, it is obvious that the draft code does not penetrate to the core of the problem and thus is devoid of practical interest. It can be convincingly presumed that the substantive regulation was not in the original plans of the code drafters due to the fact that the task of raising the basic level of safety/security cannot be aligned with the illicit actions against foreign space assets and the policy driven by ulterior motives in general. Apparently, it is no coincidence that in the Committee on the Peaceful Uses of Outer Space the representatives of these very countries showed no intention of addressing the issue of the safety of space operations in a more fundamental way or of advancing in the joint analysis of its various complex aspects.

8. The emphasis on promoting the draft code has already had a negative impact on the development of a set of guidelines on ensuring the long-term sustainability of outer space activities. To achieve their goals, the authors and co-sponsors of the code have been demotivating the negotiation process within the Scientific and Technical Subcommittee in a more evident way. The continuation of such a policy would be an obvious mistake on their part.

9. The tasks involved in developing a normative regulation on a wide range of issues relating to ensuring the safety of space operations and the long-term sustainability of outer space activities in general, which have been set by the Committee's member States themselves, are quite comprehensive and clear. The format of the guidelines under preparation allows for the accomplishment of these tasks in the most comprehensive way. Therefore, the beneficial objectives agreed on in 2011 can still be achieved, provided, of course, that all the participants of the process show enough common sense and determination.

10. The Committee's member States should take care to preserve rationality in the current, much-discussed political reality. The actions of the group of States to promote the code, bypassing the Committee, create a situation unworthy of benevolent appraisals. The assessment of this unprecedented situation at the fifty-eighth session will show how the Committee perceives its status, potential and prospects of activity.