



PHILIPPINES

As delivered

**United Nations General Assembly
Open-Ended Working Group on Reducing Space Threats Through Norms,
Rules, and Principles of Responsible Behavior**

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Agenda Item 6(a): To Take Stock of Existing International Legal and Other Normative Frameworks
Concerning Threats Arising From State Behavior With Respect To Outer Space (Topic 4: Applicable
Elements of the Legal Regimes Governing Aviation and the Sea in the Context of Threats Arising
From State Behaviors With Respect to Outer Space)

Statement

*Delivered by Mr. Jonelle John S. Domingo,
Permanent Mission of the Republic of the Philippines
to the United Nations and Other International Organizations in Geneva*

Mister Chair,

I wish to take this opportunity to thank you again for your excellent work and to also thank our panelists for lending their expertise.

I take the floor to elaborate on our position with regard to the duty of due regard, which is a principle that has been discussed repeatedly in at least two panels this week.

The mandate of this session is to take stock of and clarify existing international law as they apply on space. This must be framed in the overall mandate of our group to help clarify and characterize what constitutes responsible behavior. The most relevant aspect of this is the exploration of relevant principles that are enshrined in the 1967 Outer Space Treaty, and the U.N. Institute of Disarmament Research has identified eight of them in its working paper.

For the Philippines, the most consequential of these principles in terms of determining responsible behavior is the duty of due regard. The clarification of the duty of due regard is therefore essential to the work of this Group. We therefore thank the experts that have shared their views regarding the applicability of due regard in outer space. But we believe it is important for states to also offer their own understanding of this foundational principle, with the view to finding commonalities that would lead to solid development of norms that will give this legal principle concrete expression.

It is in this context that we have circulated a working paper entitled *The Duty of Due Regard as a Foundational Principle of Responsible Behavior in Space*. This document is now available on the UNODA website.

This working paper traces the origins of the duty of due regard in the law of the sea. It is not our intention to apply the principles of the law of the sea verbatim to outer space, but we believe that consistency of international law demands that the application of due regard in outer space does not deviate significantly from its application in the context of the high seas. We think that understanding the legislative history behind its codification, along with the development of norms through state practice and jurisprudence, provide useful guidance as we attempt to clarify it in the context of outer space.

In this regard, we wish to highlight the following salient elements:

First, the legislative history of due regard in the law of the sea indicates that the said duty represents a replacement of the former *laissez-faire* treatment that underpins the principle of *mare liberum*. This is reflected in the evolution of this duty from the more judicious language of “reasonable regard” in the 1958 Geneva Convention on the High Seas to the more normative and demandable duty of “due regard” in the 1982 U.N. Convention on the Law of the Sea, or UNCLOS.

Second, similar to the evolution of norms on the use of the high seas, the enshrinement of the duty of “due regard” in the 1967 OST implies the same departure from a “*laissez-faire* treatment” of outer space towards a regime characterized by the accommodation of competing rights and interests. In the context of outer space, this balancing of rights and interests should involve two dimensions: first, between and among spacefaring nations; and, second, between a spacefaring nation and the wider international community.

Third, subsequent interpretations of the application of the duty of “due regard” arising from law of the sea jurisprudence could offer practical guidance in the context of clarifying the application of the same duty in outer space. The following ideas are instructive:

While the duty of “due regard” does not constitute a blanket limit on state conduct, it also does not permit states to merely note other states’ rights and still do as they wish. Instead, its application depends upon the nature of the rights and duties involved, their importance, the extent of the anticipated impairment, the nature and importance of the activities contemplated, and the availability of alternative approaches.

In most cases, the duty of “due regard” would necessarily involve consultations on the basis of good faith, and require that the avenues for such consultations are exhausted. Such consultations should encompass a conscious balancing of rights and interests, including extensive concern regarding the other party’s reaction; suggestions of compromise and willingness to offer assurances; and an understanding of other parties’ concerns in connection with any proposed activities.

We note that such consultations are provided for in Article 9 of 1967 OST as an optional tool. While it is not a legally-binding obligation, we believe responsible space behavior demands that the threshold for conducting consultations be minimal. We therefore support suggestions from the delegations of the Republic of Korea and Germany to explore possibilities to actualize

such consultations, including through designations of national focal points to facilitate ease in coordination.

Finally, the duty of “due regard” imposes “due diligence obligation” upon states over the conduct of their nationals and vessels, with the view to ensuring that their conduct do not prejudice the rights and interest of other states.

I thank you, Mister Chair.