

Peaceful Purposes and Chinese Law

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Peace is one of the most important values in contemporary international law. The Charter of the United Nations (The UN Charter), the most important legal instrument of international law, is also the most important international treaty for the purpose of maintaining the peace and security in the world. The UN Charter declares the principle of peace to be one of the key principles in international relations, and states that the most fundamental purpose of the United Nations is to maintain international peace and security. In this respect, Art.1.1 of the UN Charter indicates that the United Nation's main purpose is: [t]o maintain international peace and security, and to that end to take collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and the bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. ” Although the UN Charter provides the right of inherent individual or collective self-defense, the peaceful settlement of international disputes is also a fundamental principle of international law.

Peace refers to a stable, harmonious, non-warfare state of the (international) community. Peace is associated with security. National security means a state where a country's existence and development are not threatened, National security is a subjective and psychological pursuit of a state, the realization of which depends on the establishment of peaceful system, whereas the peace connects with the overall security of the international community.¹ The UN Charter requires that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nation.”² Since the entry into force of the Charter, peace has been recognized as a basic philosophy of international law, including international rules and practice related to the principle of peace,³ the

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¹ See Gou Zuxue, Chen Huiping, On Some Issues of International Law (in Chinese 《国际法学专论》), Science Press, 2007, p. 28.

² Art. 2.4 of the Charter of the United Nations.

³ The principles of peace of International law includes two fundamental principles of international law, which are

regimes of the peace,⁴ and peace keeping activities.⁵ As a new area of human activities, outer space should also be governed by the principle of the peaceful exploration and use. This principle is declared in the texts of outer space law.

As the Charter of outer space, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (hereinafter referred as the Outer Space Treaty, or the OST)⁶, confirms the applicability of international law, including the UN Charter to outer space activities. Article 3 of the OST provides that: "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding." This principle of the OST has passed into customary international law.⁷ The 1979 Moon Agreement also confirms the principle of peaceful use of outer space.

According to Detlev Wolter, China plays a decisive role in the NMD⁸ issue and in the prevention of an arms race in outer space.⁹ As the biggest developing country and one of the five permanent members of the Security Council of the United Nations, and the State Party of 4 of the 5 international space treaties (except the Moon Agreement), China is a peace-loving nation, unswervingly goes the way of peaceful development.¹⁰ One of the purposes of Chinese space activities is peaceful use of outer space, in order to promote human civilization and social development, and to benefit all humankind.¹¹ China is opposed to excessive and unlimited military use of outer space, and tries her best to establish international legal regimes of non-weaponization outer space.

Furthermore, China is a State that has greatly suffered by foreign invasion in its history, has not achieved national unity until now and is continuously enlarging its national interests impact with economic development. When confronted with the degradation of international situation of militarization and weaponization in outer space, China has to develop her space military capabilities, just as what other States do in practice. However, the main objective of Chinese space activities is to defend national interests, especially national security and economic development, and to safeguard China's outer space assets. In other words, it is for defensive purpose.

When we discuss the militarization and the weaponization of outer space, it is necessary to make clear what these terms mean. The militarization of outer space, as

the prohibition of illegal use of force and peaceful settlement of international disputes.

⁴ The regimes of Peace mainly include United Nations collective security regime, arms control and disarmament regime, and international sanctions regimes, including the punishment of the crime of war and aggression.

⁵ Peaceful operations are the peace-keeping operations of the United Nations.

⁶ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *opened for signature* on Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty].

⁷ Francis Lyall and Paul B. Larsen, *Space Law, A Treatise*, Ashgate, 2009.p.501.

⁸ National Missile Defense.

⁹ Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.50.

¹⁰ See Information Office of the State Council of the People's Republic of China, the White Paper *China's Space Activities in 2006*, published in the *Space Law Review*, the Presse of Harbin Institute of Technology (H.I.T.) Vol. II & III, p. 225.

¹¹ See Information Office of the State Council of the People's Republic of China, the White Paper *China's Space Activities (2000)*, published in the *Space Law Review*, Press of the H.I.T., Vol. II & III, p. 212.

defined by He Qizhi, refers to the increasing military use of outer space which would lead to arms race and military confrontation therein. Its substance contains two aspects: the growing utilization of artificial satellites by the military to support and enhance the performance and efficiency of armed forces and weapons on earth; and second, the development of outer space weapons, including both space-based weapon systems for attacking and destroying targets on the earth, in the atmosphere and outer space or for damaging their normal functions, as well as weapon systems based on earth or in the atmosphere for attacking and destroying space objects of the adversary or damaging their normal functions.¹² Concerning the meaning of space weaponization, the definition given by the researchers of the website “Reaching Critical Will” is rather clear: Space weaponization is generally understood to refer to the placement in orbit of space-based devices that have a destructive capacity.¹³ Some also argue that weapons that travel through space in order to reach their targets, such as hypersonic technology vehicles, also contribute to the weaponization of space. The overwhelming majority of UN member states are concerned that the weaponization of outer space will lead to an arms race.¹⁴

I. The significance of the peaceful exploration and use of outer space

Outer space legal instruments emphasize the significance of the peaceful uses of outer space, and restrict the militarization of outer space. After the launching of Sputnik I on October 4 1957, UN Resolution No. 1148 (XII) was adopted on 14 November 1957, stating that “.....outer space shall be exclusively for peaceful and scientific purposes”.¹⁵ The Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (1963 Legal Principles) adopted by the UN General Assembly in 1963, proposed in its Preamble that “ desiring to contribute to broad international co-operation in the scientific as well as in the legal aspects of exploration and use of outer space for peaceful purposes,” “recalling its resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression, and considering that the aforementioned resolution is applicable to outer space,” “solemnly declares that in the exploration and use of outer space States should be guided by the following principles: 4, The activities of States in the exploration and use of outer space shall be carried on 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. ”

The Outer Space Treaty reaffirms the main principles of the 1963 Legal Principles in its Preamble, where the concept of “peaceful purposes” is clearly put

¹² He Qizhi, *Essays on International Law and Space Law*, China Institute of Space Law, 2000, p.347-348.

¹³ Preventing an Arms Race in Outer Space, A backgrounder on the militarization and weaponization of outer space. Reaching Critical Will. available at <http://www.reachingcriticalwill.org/legal/paros/parosindex.html>, Reaching Critical Will. (last visited Feb.9, 2008).

¹⁴ Id.

¹⁵ See N.M. Matte, *Aerospace Law*, (1969), p.363. Cited by I. H. Ph. Diederiks-Verschoor, V. Kopal, *An Introduction to Space Law*, Wolters Kluwer, 2008, p.136.

forward: “States Parties to the Treaty” , “recognizing the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,”... .. “desiring to contribute to broad international co-operation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes,” In addition, the Preamble recalls the United Nations General Assembly resolution 110 mentioned above. Article 3 of the OST states: “States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, 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.”

The OST officially reiterates the principle of “peaceful purposes” in article 4, which provides that “States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction (WMDs), install such weapons on celestial bodies, or station such weapons in outer space in any other manner.” (paragraph 1) “The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited. ” (paragraph 2)

We should pay attention to the definition of “weapons of mass destruction” (WMD). A WMD is a weapon that can kill large numbers of humans and/or cause great damage to man-made structures (e.g. buildings), natural structures (e.g. mountains), or the biosphere in general. The most widely used definition of “weapons of mass destruction” is that of nuclear, biological or chemical weapons (NBC) although there is no treaty or customary international law that contains an authoritative definition.

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979 Moon Agreement, MA) gives a more detailed statement on the issue of “peaceful purposes”. Its article 3 provides that: “The moon shall be used by all States Parties exclusively for peaceful purposes.” It is suggested that, any threat or use of force or any other hostile act or threat of hostile act on the moon is prohibited. It is likewise prohibited to use the moon in order to commit any such act or to engage in any such threat in relation to the earth, the moon, spacecraft, the personnel of spacecraft or man- made space objects (Paragraph 2) . States Parties shall not place in orbit around or other trajectory to or around the moon objects carrying nuclear weapons or any other kinds of weapons of mass destruction or place or use such weapons on or in the moon (Paragraph 3) . The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on the moon shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The

use of any equipment or facility necessary for peaceful exploration and use of the moon shall also not be prohibited (Paragraph 4).” Nevertheless, with only thirteen ratifications and four signatures, the Moon Agreement has a rather limited influence in practice.

Therefore, the peaceful use of outer space is a clear requirement of international legal instruments. Particularly, exploration and use of outer space should be for peaceful purposes. Moreover, the military use of outer space is subject to appropriate limit; it is especially prohibited to place, settle or install nuclear weapons and weapons of mass destruction in outer space, in accordance with the non-weaponization provisions. For the Moon and other celestial bodies, the provisions of demilitarization are more stringent. However, the meaning of peaceful use of outer space or using outer space for peaceful purposes is not yet clearly defined. There are different understandings and practices among different countries.

II. The meaning and the related practices of using outer space for “peaceful purposes”

With regard to using outer space for “peaceful purposes”, what does “peaceful” mean? As the existing space law instruments do not define this term, several interpretations have been proposed. Some commentators consider it as “non military”,¹⁶ others consider it as “no aggressive”.¹⁷ Although some scholars consider that “peaceful purposes” mean the absolute prohibition of military use of outer space, this argument is not convincing. Indeed, even when the 1963 Legal Principles and especially the 1967 Outer Space Treaty were adopted, the military use of outer space had already begun.¹⁸ One can even argue that the military use of outer space has been a driving force for the development of space technology to countries. The exploration and use of outer space for the peaceful purposes, obviously can not completely rule out military use. In fact, during the early time of exploration and utilization of outer space, especially during the Cold War, the United States and Soviet Union had conducted a fierce space race. They took a large number of space scientific and technological achievements into military, and took outer space as an important area to struggle for the military superiority.¹⁹ The two had invested a lot of manpower and financial resources before the Soviet Union collapsed. The United States became the only super space power, and emphasized on absolute control of outer space, withdrew from the ABM treaty²⁰ in 2001, and deployed a variety of missile defense systems, which will probably cause a new round of space race. The militarization of outer space is becoming more serious than ever, and the danger of the weaponization of outer space is also even worse.

Many existing agreements on arms control and disarmament that are relevant to

¹⁶ Bin Cheng, *Studies in International Space Law*, Clarendon Press Oxford, 1997, pp.523-38.

¹⁷ Francis Lyall and Paul B. Larsen, *Space Law, A Treatise*, Ashgate, 2009, p.524.

¹⁸ *Id.* p.513.

¹⁹ Xia Liping, The Progress and Obstacles of Controlling Outer Space Arms (in Chinese 《外层空间军备控制的进展与障碍》), *Contemporary Asia-Pacific*, in 2002 No. 6, p. 35.

²⁰ The 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems Between the United States and the Soviet Union.

outer space have played a positive role in the peaceful use of outer space and in regulating outer space activities, including those bilateral ones, and the existing legal instruments concerning outer space, such as the 1967 Outer Space Treaty, 1979 Moon Agreement, the Convention on the Registration of Objects Launched into Outer Space (1975 Registration Convention), the Convention on International Liability for Damage Caused by Space Objects (1972 Liability Convention), 1963 Partial Test Ban Treaty,²¹ 1979 Environmental Modification Convention and Anti-missile Convention, etc., have played a positive role in the peaceful use of outer space and in regulating outer space activities, however, there are also obvious insufficiencies and loopholes in these instruments, for example, the Outer Space Treaty only prohibits the deployment of nuclear weapons and other WMDs in outer space, leaving other types of advanced conventional or “new concept” destructive weapons unchecked. The ABM Treaty has been abrogated, which impaired the restriction of development and deployment of space weapons. Some are of limited adherence, for example 1979 Moon Agreement.²² Besides, these instruments do not deal with such issues as the threat or use of force from the earth (either from land, sea or air) against space objects.²³ Therefore, they are unable to effectively prevent the deployment of weapons and an arms race in outer space.²⁴ Strengthening the rule of law in outer space to prevent the weaponization of space becomes an impelling demand.

China’s view on the “peaceful purposes” can be resumed as: implement the principle of the peaceful uses of outer space; oppose the militarization of outer space; and particularly prevent unlimited and excessive military use of outer space. In order to keep the outer space for peaceful purposes, first of all, it is necessary to oppose the weaponization of outer space, prohibit the placement of weapons in outer space, and prohibit threat or use of force against outer space objects. That is the reason why in recent years, China has been making efforts with other countries to promote the establishment of a treaty that will prevent the weaponization of outer space. Furthermore, like other space-faring nations, China also properly develops its space military capability, emphasizes the protection of national security, China’s anti-satellite (ASAT) test in January 2007 and the anti-missile test in January 2010 are two recent examples.

It is important to clarify the definition of “space weapons” in dealing with the problem of weaponization of outer space, because the definition of the space weapons or the weapons in space will affect the content of the future legal instrument banning the weaponization in outer space. This is a difficult and arguable definition, according to the opinion of Chinese official documents, space weapons would include: (1) any

²¹ The Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, signed on 5 August 1963 (in force 10 October 1963.); 480 UNTS 43; 14 UST 1313; (1964) UKTS 3, Cmnd 2245;(1963) 2ILM 883;(1963) 57 AJIL 1026.

²² Until February 2010, there are only 13 ratifications and 4 signatures for the Moon Agreement.

²³ “An Effective Way to preserve the Security and Prevent an Arms Race in Outer Space--To negotiate and conclude an International Legal Instrument at an early date”, Statement by Counsellor Wu Haitao, at the International Conference on “Safeguarding Space Security: Prevention of an Arms Race in Outer Space” 2005/03/22, available at <http://www.fmprc.gov.cn/eng/errorpath/t189255.htm>, (last visited Feb. 2, 2010).

²⁴ Joint Working Paper by the Delegations of China and the Russian Federation at Conference on Disarmament in Geneva: “Possible Elements for a Future International Legal Agreement on the Prevention of the Deployment of Weapons in Outer Space, the Threat or Use of Force Against Outer Space Objects” 2002/09/26 available at <http://www.fmprc.gov.cn/eng/backup/jksbf/cjkk/2622/t15442.htm>, (last visited Feb. 6, 2010).

space- ground-, air- or sea-based device or installation target objects in outer space; (2) any other device or installation stationed in outer space for the purpose of attacking any object in the atmosphere, or on the ground, in the air, or at sea.²⁵ According to the 2008 Russia-China Draft Treaty PPWT (to be elaborated below), “weapons in outer space” means any device placed in outer space, based on any physical principle, specially produced or converted to eliminate, damage or disrupt normal function of objects in outer space, on the Earth or in its air, as well as to eliminate population, components of biosphere critical to human existence or inflict damage to them.²⁶ In fact, as Hui Zhang analyzed, two key elements of definition regarding the scope of space weaponry are the “basing” of weapons and what constitutes an “object in outer space.” Regarding the basing question, any weapon if stationed in outer space should be classified as a space weapon. For the question of what is an object in outer space, if the “object” refers only to satellites, then the scope of the space weapon is any weapons stationed in outer space and any anti-satellite (ASAT) weapons. However, if the “object” refers also to missiles traversing space, then space weapons will be defined as any space-based weapons, any ASAT weapons, and any anti-ballistic missile weapons intercepting missiles in outer space. This approach would permit a non-space-based Ballistic Missile Defense (BMD) system, while prohibiting a space-based BMD system. However, the later “broad” approach would put a strict limitation on U.S. missile defense system development.²⁷

Some scholars in United States and other countries believe that, using outer space for “peaceful purposes” does not prevent the military use, so the military use of outer space is legal, as long as the nature is non-aggressive, it is not against the requirement of using outer space for “peaceful purposes”. As a result of the disintegration of the Soviet Union, Russia’s economic development would take some time, and the United States became the sole superpower and super space power since the end of the cold war. And thus United States began to pursue the absolute control of outer space.

While space has become an increasingly important arena for military operations, countries have not yet placed weapons in space or developed weapons which would fire into space. Thus, for the moment, space is non-weaponised. However, this situation may soon change.²⁸ A series of U.S. military planning documents issued in recent years explicitly reveal the U.S. intention to “control space” by using weapons in or from space and establish superiority over the world. The control of space is aimed at assuring the U.S. access to space, freedom of operations within the space medium, and denying others the use of space. The U.S. has deployed ASAT weapons Ground-Based Midcourse Defense (GMD) systems since September 2004, and is developing a global-coverage missile defense system²⁹ In February 2008 U.S. “shoot

²⁵ CD/OS/WP.14/Add.1, 21 July 1986.

²⁶ See website: [reachingcriticalwill, available at http://www.reachingcriticalwill.org/legal/paros/parosindex.html](http://www.reachingcriticalwill.org/legal/paros/parosindex.html), (last visited Feb.9, 2008).

²⁷ Hui Zhang, *The U.S. Weaponization of Space : Chinese Perspectives*, available at http://belfercenter.ksg.harvard.edu/files/npri_dominance_zhanghui.pdf, (last visited Feb.15,2010).

²⁸ *Weaponization of Space*, available at <http://www.nuclearfiles.org/menu/key-issues/space-weapons/basics/introduction-weaponization-space.htm>, (last visited Feb.15, 2010).

²⁹ Hui Zhang, *Chinese Perspectives on the Prevention of Space Weaponization*, available at

down” of a crippled U.S. spy satellite using developing sea-based missile defense technology.³⁰

In respect of protecting space assets, the United States pursues the absolute security of its country, and opposes to the elaboration of any legal instrument which prevents the weaponization of outer space. This leading ideology was mainly reflected in the National Space Policy, signed by President Bush, in 2006. The United States also established a Space Troop of tens of thousands personnel³¹, and had carried out the “Schriever” space war game for five times (from 2001 to 2009).

Many Western countries, like Canada, agree with the above viewpoints of the United States on the interpretation of “peaceful purposes”. Japan recently has adopted the Basic Law of Outer Space, marking the overthrow of its original view that the use of outer space for peaceful purposes means the complete demilitarization, and has slid into the interpretations of the United States.³²

III. The interpretation of the peaceful use of outer space in Chinese law

A. China’s peaceful thinking about international relations

China is a peace-loving country. Among Chinese major contributions to international law, the salient one is that China put forward with India in the 1950’ the “Five Principles of Peaceful Coexistence”. The so-called Five Principles of Peaceful Coexistence, as indicated in the preamble of the Chinese 1982 Constitution, is “China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries... .., and strives to safeguard world peace and promote the cause of human progress. ” It is evident that China put much emphasis on the principle of the peaceful coexistence by taking it as the aim of the Five Principles, and also by calling the five principles as Five Principles of Peaceful Coexistence. These five principles became later fundamental principles governing international relations, and the content of the Five Principles has been concretized in many international political and legal documents.³³

The 1982 Constitution of China also provides that the China National People's Congress decides on questions of war and peace³⁴. When the National People's Congress is not in session, the Standing Committee of the National People's Congress

<http://www.nuclearfiles.org/menu/key-issues/space-weapons/issues/zhang-chinese-perspectives.htm>, (last visited Feb.15, 2010).

³⁰ Victoria Samson, “CDI Analysis: Shooting Down USA 193,” Feb. 27, 2008, World Security Institute website, available at

<http://www.worldsecurityinstitute.org/showarticle.cfm?id=265>(last visited Feb.15, 2010).

³¹ Hui Zhang, *The U.S. Weaponization of Space : Chinese Perspectives*, available at

http://belfercenter.ksg.harvard.edu/files/npri_dominance_zhanghui.pdf, (last visited Feb.15,2010).

³² Setsuko Aoki, Current Status and Recent Developments in Japan’s National Space Law and its Relevance to Pacific Rim Space Law and Activities, *Journal of Space Law*, No2, Winter 2009.

³³ Hou Fang et AL, 60 years of China’s International Law(in Chinese 《新中国国际法 60 年》), Presse of Shanghai Academy of Social Sciences, 2009, p.37-39.

³⁴ Article 62, paragraph 14 of the Constitution of China.

decides on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defense against aggression³⁵. The President of the People's Republic of China, in pursuance of decisions of the National People's Congress and its Standing Committee proclaims a state of war, and issues mobilization orders³⁶.

In the early 21st century, China's recent foreign policy can be summarized by the theories of "Peaceful development" and "Building a harmonious world".

Chinese government issued a white paper in December 2005 on "*China's Peaceful Development Road*", explained the meaning of the Peaceful Development theory. In a broad sense, China's Foreign Policy is defined by its path of peaceful development. That means: firstly, China will work for a peaceful international environment in which it can develop and at the same time it will promote world peace and common prosperity with its own development; secondly, it will mainly depend on itself to realize its growth; and thirdly, it will continue its basic national policy of reform and opening up in a world of globalization by conducting international cooperation on the basis of equality and mutual benefit featuring a win-win outcome for all. China has been working with all other countries to attain the lofty goal of "building a harmonious world." ³⁷ China is now taking the road of peaceful development, and will continue to do so when it gets stronger in the future. The theory seeks to characterize China as a responsible biggest developing country in the world, emphasizes soft power, and vows that China is committed to its own internal issues and improving the welfare of its own people before interfering with world affairs. The term also suggests that China seeks to avoid unnecessary international confrontation. The road of peaceful development accords with the fundamental interests of the Chinese people; it also conforms to the objective requirements of social development and progress of mankind.

The theory "Building a harmonious world" was elaborated by a series of speeches of President Hu Jintao. But the thinking comes from Chinese traditional thoughts. On September 15, 2005, Chinese president Hu Jintao made a speech at UN summit, and proposed "to strive hard to establish a lasting peace and a joint prosperous harmonious world". To this effect, China proposes politically to uphold multilateralism and realize joint security; economically to uphold mutual benefit cooperation and realize joint prosperity; culturally to uphold the spirit of tolerance and jointly establish a harmonious world; and institutionally, to uphold active and prudent guidelines and promote the UN reform.³⁸ For realizing the common security, China upholds harmony and mutual trust.

As correctly analyzed by Prof. Nie Jianqiang, the thinking of "harmonious world" as Chinese new conception of world order, reflects Chinese new approach towards

³⁵ Article 67, paragraph 18 of the Constitution of China.

³⁶ Article 80 of the Constitution of China.

³⁷ Information Office of the State Council of China published on Thursday, December 22, 2005, a white paper "*China's Peaceful Development Road*", available at http://english.peopledaily.com.cn/200512/22/eng20051222_230059.html (last visited Feb. 11, 2010).

³⁸ "Build Towards a Harmonious World of Lasting Peace and Common Prosperity" Speech by H.E. Hu Jintao President of the People's Republic of China At the United Nations Summit New York, September 15, 2005 available at <http://www.china-un.org/eng/hyyfy/t212915.htm> (last visited Feb. 16, 2010).

international affairs. The thinking also indicates that China may change from a passive participant to an active actor and may promote Chinese culture including the notion of harmony in the world affairs. China will insist on peaceful development and is a responsible country in the world.³⁹

The above theories show China's love of the world peace, and China's ideas to establish a lasting peace and a joint prosperous harmonious world. These general ideas should apply also in the field of outer space activities.

B. China's Policies about peaceful use of outer space

In the policy papers relevant to outer space activities, China adheres to peaceful use of outer space, and opposes weaponization of and an arms race in outer space.⁴⁰ The white paper *China's National Defense* (1998) pointed out that outer space belongs to all mankind, should be used exclusively for peaceful purposes to benefit mankind. Therefore, China supports complete prohibition and thorough destruction of space weapons, opposes the development of anti-satellite weapons.⁴¹ China considers that the international community, in particular those space powers, should take concrete action to prevent the weaponization of outer space; totally ban all types of outer space weapons, including anti-missile weapons and anti-satellite weapons, to achieve the non-weaponization of outer space; prohibit using force or conducting hostilities in outer space, from outer space or into outer space; all countries commit themselves to refrain from testing, producing or placing weapons in outer space, nor using outer space to seek strategic advantages on the ground, such as placing important parts of ground anti-missile system in outer space on the purpose of developing strategic defensive weapons; negotiate and conclude international agreements with legally binding force including the above contents as soon as possible.

Then, in 2000 and 2006, China issued two space policy white papers — *China's Space Activities* (2000) and *China's Space Activities in 2006*. The two papers reviewed and indicated respectively the strategy and plans of China's space activities in future, including the aims and principles of the development, the progress made in the passing years, the development goals and the main task for the future, policies and measures of the development, international exchanges and cooperation. *China Space Activities* stressed the development aims of Chinese space activities as follow: to explore outer space, and to expand knowledge of the universe and the Earth; to use outer space peacefully, to promote human civilization and social development, to benefit all mankind; to meet the growing need of the economic construction, national security, scientific and technological development and social progress, to safeguard national use, to enhance national comprehensive strength. Among those development aims the peaceful use of outer space occupies an important position. *China's Space*

³⁹ Nie Jianqiang, *Towards A World of Harmony: A Historical Chinese Conception of the World Order*, available at [http://www.nus.edu.sg/iro/nus/students/prog/others/nus-wuhan/NUS-WHU%20Winter%20Programme%20Course%20Syllabus%20%20\(Order-Towards%20a%20World%20of%20Harmony\).doc](http://www.nus.edu.sg/iro/nus/students/prog/others/nus-wuhan/NUS-WHU%20Winter%20Programme%20Course%20Syllabus%20%20(Order-Towards%20a%20World%20of%20Harmony).doc), (last visited Feb. 14. 2010).

⁴⁰ On January 23, 2007, Foreign Ministry Spokesman Liu Jianchao's speech on Regular Press Conference, available at <http://www.mfa.gov.cn/chn/gxh/tyb/fyrbt/jzhs/t291116.htm>, (last visited Oct 28. 2009).

⁴¹ Information Office of the State Council of the People's Republic of China, the White Paper : *Chinese national defense* (1998) , available at http://news.mod.gov.cn/acd/2009-07/09/content_3067610.htm, (last visited Nov. 6 2009).

Activities in 2006 reaffirmed in its foreword that China would unswervingly follow the road of peaceful development.⁴²

Recently, China calls for joint efforts by the international community to build a “harmonious outer space order” which is conducive to peace, development, cooperation and the rule of law.⁴³

China also attaches importance to the role of space in protecting national security. Meanwhile China actively promotes international cooperation and exchange in the field of space activities.⁴⁴ As a matter of fact, cooperation is an important way to resolve tensions and to establish the peace.

IV. Relations between the ideas and the practice of China

China believes that the danger of weaponization of outer space has come true with the evolution of space technology and development of international security situation. The existing legal system cannot keep weapons other than Weapons of Mass Destruction away from outer space, or prevent threat or use of force against outer space objects. China is of the view that to negotiate a new legal instrument, with the aim of filling existing legal gaps, is of fundamental importance to maintaining outer space security.⁴⁵ Therefore, China and Russia submitted a draft treaty for preventing the weaponization to the Conference on Disarmament in 2008.

Some commentators made comments on some direct threats on China’s national security concerning outer space activities. As Hui Zhang analyzed in a paper, Chinese officials have expressed a growing concern that U.S. space and missile defense plans will stimulate a costly and destabilizing arms race. In particular, the prevailing view is that the United States seeks to neutralize China’s strategic nuclear deterrent, freeing itself to intervene in China’s affairs and undermining Beijing’s efforts to prod Taiwan to reunify. US missile defense plans pose great threat to China’s national security. Hui Zhang believed that, If U.S. plans are left unchecked, Beijing may feel compelled to respond by introducing its own space weapons.⁴⁶

In fact, like other countries, China also attaches certain importance to military use of outer space and enhances space capacities in order to safeguard national interests, especially national security. But Chinese national defense policy is purely defensive in nature.

⁴² Information Office of the State Council of the People's Republic of China, the White Paper *China's Space Activities in 2006*, October 2006, English version see *Space Law Review*, vol.2-3, p. 298.

⁴³ Statement by H.E. Ambassador LIU Zhenmin at the Fourth Committee of the 64th Session of the UN General Assembly on Agenda Item 30: “International cooperation in the peaceful uses of outer space” 2009/10/21 available at <http://www.fmprc.gov.cn/eng/wjz/zwjg/zwbdt/621896.htm>, (last visited Feb. 2, 2010).

⁴⁴ See the White Paper *China's Space Activities*. English version see *Space Law Review*, vol.2-3, p. 298.

⁴⁵ Statement by the Chinese Delegation at the Thematic Debate on Outer Space at the First Committee of the 64th Session of the UNGA (New York, October 19, 2009) available at <http://www.fmprc.gov.cn/eng/wjz/zjg/jks/kjfywj/t621647.htm> (last visited Feb. 6, 2010).

⁴⁶ Hui Zhang, Action/Reaction: U.S. Space Weaponization and China, available at http://www.armscontrol.org/act/2005_12/Dec-cvr, (last visited Feb.16, 2010). Jason Sherman, “China Looks Askance At Space War Game,” *Defense News*, 28 February 2001, p.3. available at <http://www.nti.org/db/china/spacepos.htm>(last visited Feb.16, 2010)

In January 2007, a Chinese anti-satellite (ASAT) test to destroy the Chinese FY-1 meteorological satellite was conducted, it was obviously an effort of China to reinforce its military space capability. Some commentators, including academics and relevant governmental officials of some countries, had put forward criticisms and accusations on this event. However, China is not the first country to undertake ASAT test. The United States and the Soviet Union had undertaken ASAT tests long time ago, and thus created space debris.⁴⁷ From a legal point of view, there is no clear international legal rule that prohibits engaging in similar experiments in outer space.⁴⁸ We also should note that, China has long attempted to avoid an arms race in outer space, China had proposed from 1990's to conclude a legal instrument to prevent the weaponization of outer space, and had consulted with other countries many times for the elaboration of the legal instrument, but this proposal was always objected by the United States, during this time China's national security has been threatened by several elements, including the development of the US missile defense systems. China's anti-satellite test was carried out just under such a circumstance. The event reveals the need for the establishment of international mechanisms to prevent outer space weaponization, and even to prohibit ASAT test.

On January 11, 2010, China conducted a test on ground-based midcourse missile interception technology within its territory. The test has achieved the expected objective. As the Xinhua report said, the test is defensive in nature and is not targeted at any country.⁴⁹ In addition, there was no space debris caused by the test.

How to explain the relations between China's military space-capability building and China's idea about the peaceful use of outer space mentioned above? Besides the paramount necessity of protecting of national security, we should think also the relation between the measures and aims. China's aim in this field is the prevention of the weaponization, but, if it has no space power, the voice of China for the space peace will be weak. Developing the military space technology in order to persuade relevant party to go to the negotiation table, and at the end to attend the aim of maintaining the peace and stopping the arms race in outer space is maybe a have-to choice of China in the actual international situation.⁵⁰ The same idea is shared by the Chinese Air Force Commander General Xu Qiliang, he said on November 1st, 2009, "The militarization of space is a challenge of the peace of humanity. When facing this challenge, there will be no say without adequate power, so only those with strong power can maintain and protect the peace." "China is a responsible developing country which upholds a national defense policy that is defensive in nature".⁵¹

⁴⁷ Theresa Hitchens Saving Space: Threat Proliferation and Mitigation, available at http://www.icnnd.org/research/Hitchens_Saving_Space.pdf, (last visited Feb.16, 2010). Li Juqian, Legality and Legitimacy: China's ASAT Test, *China Security*, Vol. 5 No. 1 Winter 2009, pp. 43-52.

⁴⁸ Li Juqian, Legality and Legitimacy: China's ASAT Test, *China Security*, Vol. 5 No. 1 Winter 2009, pp. 43-52.

⁴⁹ Xinhua, China conducts test on ground-based midcourse missile interception, available at http://news.xinhuanet.com/english/2010-01/11/content_12792329.htm, (last visited Feb. 8, 2010).

⁵⁰ See Huang Jia, *Research on Ethics of Outer Space*(in Chinese 《外空伦理研究》), Master Degree Thesis, Graduate School of National University of Defense Technology, China, December, 2006. p.60.

⁵¹ Xinhua, China's PLA eyes future in space, air: air force commander, November 02, 2009, available at <http://english.peopledaily.com.cn/90001/90776/90786/6799960.html>, (last visited Feb. 8, 2010).

V. China 's efforts for establishing the peaceful regime of outer space

China has not only focused on the major space resources to improve the national economy and people's livelihood, for the applications of satellites, including communication, remote sensing, navigation and positioning, meteorological satellites, greatly benefit the economic and social life of Chinese people, but also has consistently advocated the peaceful use of outer space, and has dedicated itself to promote the non-militarization of outer space in different international fora, especially the total ban on placing the weapons on outer space. In recent years, in the Conference on Disarmament (CD), the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), the United Nations General Assembly, and other relevant institutions concerning outer space affairs, China has always committed itself to prevent an arms race in outer space (PAROS) (A). China has also promoted the non-weaponization during its relations with relevant international organization and countries (B).

For building the mutual trust and avoiding misunderstanding, and for pooling the resources of different countries together, China has been also a country who worked hard for establishing international space cooperation(C).

(A) The efforts of China in the multilateral international fora

1/ In the Conference on Disarmament (CD)

The CD is the main international governmental forum to take charge of multilateral negotiations on the PAROS, and to conclude the relevant legal instruments. By the request of China, the Group of 21, and the Eastern European Group, the CD set up an ad hoc Committee on PAROS (the ad hoc Committee)⁵² for 10 consecutive years (1985-1994). The ad hoc Committee conducted a comprehensive review of three topics, namely 1) the definition of outer space; 2) outer space weapons; 3) the peaceful uses of outer space. Many proposals with regard to a future agreement on a ban on space weapons were put forwarded. However, there was no negotiating mandate for the ad hoc Committee, and due to the negative attitude of the United States, the ad hoc Committee could not stand after 1995.⁵³ China maintains that the ad hoc Committee should be re-established, and advocates discussing the issue of PAROS in the CD, in order to conclude a convention banning weapons on outer space.

China is of the view that to take preventive measures is essential to prevent weaponization of and an arms race in outer space.⁵⁴ That is way China promotes actively the conclusion of international multilateral treaties on banning weapons on space and PAROS. To achieve this aim, in recent years, China has submitted several

⁵² Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.60.

Yuan Yi, *Outer Space Security Reconsidered: an Analysis on China's Constructing Security Norm*(in Chinese 《重新思考外空安全：一个中国建构安全规范之解析》), *Mainland China Studies*, Volume 52, Number 2, June 2009, p.12.

⁵³ Nie Zilu, *Outer Space Arms Control and International Law* (in Chinese 《外层空间军备控制与国际法》), *Journal of Gansu College of Political Sciences and Law*, 2007, No. 7, p. 90.

⁵⁴ Statement by the Chinese Delegation at the Thematic Debate on Outer Space at the First Committee of the 64th Session of the UNGA (New York, October 19, 2009) available at <http://www.fmprc.gov.cn/eng/wjz/zjg/jks/kjfywj/t621647.htm>, (last visited Feb. 6, 2010).

relevant working papers to the CD: as early as 1985, China submitted a working paper on “Basic Position on the Prevention of an arms race in Outer Space”;⁵⁵ and in 2000 a working paper on “China’s Position on and Suggestions for Ways to Address the Issue of Prevention of an Arms Race in Outer Space at the Conference on Disarmament”.⁵⁶ The two working papers comprehensively expounded Chinese principle standpoints on the issue of the PAROS. In 2002, the delegations of China, Russia, Vietnam, Indonesia, Belarus, Zimbabwe and Syria presented a joint working paper in the CD on “Possible Elements for a Future International Legal Agreement on the Prevention of the Deployment of Weapons in Outer Space, the Threat or Use of Force Against Outer Space Objects,”⁵⁷ to further improve and enrich the CD/1645 document.⁵⁸

After 2003, China is more actively in the ranks of prohibiting outer space weapons. In August 2004, China and Russia jointly distributed two informal papers on “Verification Aspects of PAROS” and “Existing International Legal Instruments and Prevention of the Weaponization of Outer Space”. In June 2005, China and Russia jointly distributed a non-paper at the CD, entitled “Definition Issues Regarding Legal Instruments on the Prevention of Weaponization of Outer Space.”⁵⁹

In February 2008, on the basis of the above work, China and Russia jointly submitted to the CD “The Draft Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Object” (PPWT).⁶⁰ The draft treaty obligates states not to place or install in orbit around the Earth or on celestial bodies any objects carrying any kinds of weapon, not to resort to the threat or use of force against outer space objects, not to assist or encourage other states or international organizations to participate in activities prohibited by this Treaty.⁶¹ It also provides that states should take measures to prevent the above-mentioned activities from taking place on their territories or in any other place under its jurisdiction or control.⁶²

The two countries proposed to conclude a new international legal instrument based on the above draft through negotiation to prevent the weaponization of and an arms race in outer space, and to preserve a peaceful and tranquil outer space. The joint draft has obtained a support from a majority of countries because it is a good basis for discussion of a international legal instrument; other countries gave some suggestions concerning the issues of the definitions of some terms like “weapon” and the “threat of force”, the establishment of compliance mechanisms, the need of a effective and robust verification system, the relationship between a potential new instrument and the existing ones, particularly the Outer Space Treaty, the dangers posed by the

⁵⁵ CD/579.

⁵⁶ CD/1606.

⁵⁷ CD/1679.

⁵⁸ Chinese Disarmament Ambassador Hu Xiaodi’s speech at 3th Meeting in CD, *available at* <http://www.mfa.gov.cn/ce/ceun/chn/zgylhg/cjyjk/qt/t40126.htm>, (last visited Oct. 22 2009).

⁵⁹ “Definition Issues Regarding Legal Instruments on the Prevention of Weaponization of Outer Space”. *available at* <http://www.nuclearfiles.org/menu/key-issues/space-weapons/issues/index.htm>, (last visited Jan.14 ,2010).

⁶⁰ Presidential Report to the Conference on Disarmament on Part I of the 2008 Session, p.2.

⁶¹ Art.2 of the PPWT.

⁶² Art.3 of the PPWT.

development and testing of anti-satellite weapons, etc.⁶³

But the US administration dismissed the proposal out-of-hand, characterizing the offer to preserve space for peaceful uses “a diplomatic ploy by the two nations to gain a military advantage.”⁶⁴ In fact, between 1990 and today, the primary obstacle to the launch of any formal discussions or negotiations on the issue has been rejection by the United States of the need for new space arms control initiatives. As Karen House, U.S. delegate to the 63rd Session of the UN General Assembly, told the First Committee on Oct. 20, 2008: “There is much rhetoric about the prevention of an arms race in outer space. For nearly three decades, the United States has consistently pointed out that it is not possible to define the nature of a space-based ‘weapon.’ The United States also believes it is not possible to develop an effectively verifiable agreement for the banning of either space-based “weapons” or terrestrial-based anti-satellite (ASAT) systems.”⁶⁵

The Russia-China Draft Treaty marks a positive step forward in improving the outer space legal system. China and Russia take an open and inclusive approach towards the draft treaty and welcome suggestions and questions from all parties. China and Russia have responded to relevant comments and questions, and submitted a supplemental working paper to the CD. China hopes that the CD could start substantive discussions on the draft treaty as early as possible, thus paving the way for formal negotiations.⁶⁶

The Council of the European Union formally adopted a Draft of Code of Conduct on space activities in December 2008.⁶⁷ The draft code focuses on voluntary confidence building and space traffic management practices. Chinese diplomats admit the positive role of the draft code, but have consistently argued that confidence-building measures are not a substitute for a weapons ban treaty.

As there were divergent views, and because the decision making method of the CD is consensus, even for the work program, CD has experienced a long period of stagnation since 1995. On 26 March 1999, the Chinese President call in the CD to commence negotiations immediately on the PAROS, and China submitted a new proposal to re-establish the ad-hoc Committee on PAROS. ⁶⁸On May 29 2009, the CD—for the first time in more than a decade—adopted a program of work, which establishes a Working Group entitled “Prevention of an Arms Race in Outer Space (PAROS)” to discuss substantively, without limitation, all issues related to the

⁶³ See: “Preventing the placement of weapons in outer space: A backgrounder on the draft treaty by Russia and China,” *available at* Reaching Critical Will, <http://www.reachingcriticalwill.org/legal/paros/wgroup/PAROS-PPWT-factsheet.pdf>, (last visited Sept. 2, 2008).

⁶⁴ Outer Space Background and History, *available at* <http://www.reachingcriticalwill.org/legal/paros/osbackground.html#bodies>, (last visited Feb. 6, 2010).

⁶⁵ Karen E. House, United States Public Delegate to the 63rd Session of the United Nations General Assembly, Delivered in the Debate on Outer Space (Disarmament Aspects) of the General Assembly’s First Committee, Oct. 20, 2008, *Arms Control Update*, U.S. Delegation to the Conference on Disarmament, Geneva, *available at* <http://geneva.usmission.gov/CD/updates/1020OuterSpace.html> (last visited Feb. 6, 2010).

⁶⁶ Statement by the Chinese Delegation at the Thematic Debate on Outer Space at the First Committee of the 64th Session of the UNGA (New York, October 19, 2009) *available at* <http://www.fmprc.gov.cn/eng/wjw/zjzjg/jks/kjfywj/t621647.htm>, (last visited Feb. 6, 2010).

⁶⁷ See: http://www.stimson.org/space/pdf/EU_Code_of_Conduct.pdf (last visited Feb. 6, 2010).

⁶⁸ Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.69.

prevention of an arms race in outer space,⁶⁹ This in a new opportunity for the international efforts to promote outer space security. Different states should actively work together to further ascertain and consolidate relevant international consensus, and advance the work on outer space issue in CD.⁷⁰

2/ In the UN Committee on the Peaceful Uses of Outer Space (COPUOS)

COPUOS was established in 1959, and it is the main body of the UN for codifying and drafting the outer space law. It played an important role to the establishment of outer space law framework, while many provisions in this framework had an effect on the prevention of militarization and weaponization of outer space. In the future, as to further prevent of an arms race in outer space, the COPUOS can play its role by modifying the treaties and adding the content on restricting the weaponization.

In COPUOS, the issue of militarization of outer space was discussed with concern, several states proposed in 1980 that COPUOS deal with the issue and that the mandate of the COPUOS be enlarged accordingly. But the United States was against any discussion of the arms race issue in COPUOS arguing that these issues should be treated exclusively within the disarmament fora.⁷¹

In recent years, through the recommendations of the space objects registering practice of States and international organizations,⁷² and the adoption of a guideline for mitigating space debris,⁷³ the COPUOS had indirectly played a role in peaceful use of outer space. Moreover, it is still engaging in developing the legal instruments on space debris.

However, because the COPUOS adopts a consensus approach in decision-making, with the increase of its member states, especially when some countries opposed to legal restrictions of the militarization of outer space, the treaty drafting work will be postponed or be forced to a standstill. That is also the reality in recent years. During Post-Cold War period, the United States had more and more influence to the COPUOS. When setting the agenda of the COPUOS, if the issues involved the control of expansion of outer space arms and disarmament, the United States would veto against.

3/ In the U.N. General Assembly

General Assembly is a political institution of the United Nations. Its main working results are resolutions. Although the UN General Assembly resolutions are

⁶⁹ "Draft Decision for the establishment of a Programme of Work for the 2009 session," CD/1863, May 19, 2009, Conference on Disarmament, *available at* <http://www.reachingcriticalwill.org/political/cd/papers09/2session/CD1863.pdf> (last visited Feb. 6, 2010).

⁷⁰ Statement by the Chinese Delegation at the Thematic Debate on Outer Space at the First Committee of the 64th Session of the UNGA (New York, October 19, 2009) *available at* <http://www.fmprc.gov.cn/eng/wjbj/zjg/jks/kjfywj/t621647.htm>, (last visited Feb. 6, 2010).

⁷¹ Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.56.

⁷² UNGA Resolution A/RES/62/101: Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects Practice of States and international organizations in registering space objects. *available at* http://www.oosa.unvienna.org/pdf/gares/ARES_62_101E.pdf(last visited Feb. 6, 2010).

⁷³ Space Debris Mitigation Guidelines of the United Nations Committee on the Peaceful Uses of Outer Space (A/62/20) endorsed by the General Assembly Resolution 62/217(in January 2008). *available at* http://www.oosa.unvienna.org/pdf/gares/ARES_62_217E.pdf (last visited Feb. 6, 2010).

not legally binding, these resolutions would have a certain legal or political influences on states and other entities. The resolutions can be normative, indicating the establishment of customs, standards, and guidelines for appropriate behavior. Resolutions adopted by consensus can enable the creation of new treaties and the emergence of international legal norms.⁷⁴

There are three kinds of Resolutions relevant to outer space activities.⁷⁵

Firstly, the resolutions concerning the principles and regulations of outer space activities, this kind of resolutions have the nature of international law declaration, reflect the legal opinion of states, some of them could become treaty. Some of the resolutions are very important, for example, the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (Legal Principles) adopted by the UN General Assembly in 1963, established the main principles of outer space law, these principles are nearly all integrated by the Outer Space Treaty of 1967. Several resolutions establish the legal regime on space applications, some resolutions are the interpretations of certain provisions of space law treaties.

Secondly, the resolutions concerning “international cooperation in the peaceful use of outer space”, General Assembly Fourth Committee on Special Political and Decolonization prepares the draft resolutions of this kind nearly every year, General Assembly adopts this kind of resolutions. It is a kind of political declaration. The Fourth Committee has played a crucial role in advancing space cooperation.

Thirdly, the resolution concerning the prevention of an arms race in outer space (PAROS) . The General Assembly's work on disarmament is conducted through its First Committee on Disarmament and International Security. Since 1982, each year in the First Committee and then again in the General Assembly as a whole, a resolution on PAROS is introduced and adopted by an overwhelming majority of UN member states. The resolutions call for negotiations on an international legal instrument on the prevention of an arms race in outer space, one resolution also accentuate the question of negotiating an effective and verifiable agreement to prohibit anti-satellite system.⁷⁶ In fact, every country in the world votes in favor of negotiating a treaty on PAROS—except for the US objecting and Israel abstaining. The US argues that the existing arms control regime is sufficient, and that there is no need to address a non-existent threat. These PAROS resolutions fully demonstrate the common aspiration of the international community in this regard. These actions should be helpful to the final conclusion of international legal instruments concerning the security of outer space.

In 1981, the General Assembly discussed and adopted a draft treaty submitted by the former Soviet Union on “Prevention of the Deployment of Any Weapons in Outer Space,” and a draft treaty submitted by Italy on “Prevention of an arms race in Outer Space”.

⁷⁴ Outer Space Background and History *available at* <http://www.reachingcriticalwill.org/legal/paros/osbackground.html#bodies>(last visited Feb. 6, 2010).

⁷⁵ Zhu Jun, Study on International Legal Issues of Space Operations(in Chinese 《外层空间作战的国际法研究》), A Thesis of Master of Law, Graduate School of National University of Defense Technology, Changsha, Hunan, Oct.2007. pp.20-21.

⁷⁶ I. H. Ph. Diederiks-Verschoor, V. Kopal, *An Introduction to Space Law*, Wolters Kluwer, 2008, p.141.

In recent years, the UN General Assembly has started to recommending measures on transparency and confidence-building in outer space. Many states have called on space-capable states to guarantee transparency in their outer space activities and to engage in confidence-building measures. From 2005 to 2008, Russia has introduced a resolution on transparency and confidence-building measures in outer space activities.

In the UN General Assembly, China actively does the relevant work in the First and Fourth Committees, in order to stop an arms race in outer space. Beginning in 1984, China has consistently proposed draft resolutions to the UN General Assembly on PAROS, insisting that space is to be used strictly for peaceful purposes, and criticized the United States and the former Soviet Union for failing to take the lead in seeking prohibitions on all military uses of outer space.⁷⁷

Concerning the relations among the different institutions in the work of PAROS, UNISPACE II unanimously agreed on a general appeal to all state on the “prevention of an arms race and hostilities in outer space”, and called upon the CD and COPUOS to consider the issue as a matter of priority.⁷⁸

In view of the existing problem of lacking institutional coordination among the CD, the COPUOS, General Assembly and other institutions concerning the prevention of an arms race in outer space, China hopes that the objective of developing new outer space treaties, preventing the weaponization of outer space and maintaining outer space law and order could be realized through continuous and effective consultations and coordination among those organs. To achieve this goal, China has repeatedly reaffirmed that COPUOS should play a complementary function to CD and the United Nations General Assembly First Committee. COPUOS and CD should establish an appropriate and practical mechanism of cooperation.⁷⁹

(B) The efforts to prevent the weaponization in bilateral relations

In addition to the efforts made in the framework of the UN and other multilateral fora, China has made active efforts for the prevention of weaponization in bilateral relations with other countries and relevant international organizations. The document “*China’s EU Policy Paper*” issued in October 2003, states that China and Europe should “strengthen exchange and cooperation on non-proliferation and export control and the prevention of weaponization of an arms race in outer space”⁸⁰ The China-France joint statement made in January 2004 affirmed that “China and France reiterate the importance of the prevention of an arms race in outer space”; and the China-Russia joint statement concerning the international order of the 21st Century indicated that “the two sides call for the peaceful use of outer space, the prevention of the weaponization of an arms race of outer space, for this purpose, relevant legal instrument should be elaborated ”.⁸¹ In a joint statement of 23 May 2008, the two

⁷⁷ China's Attitude Toward Outer Space Weapons, Jason Sherman, “China Looks Askance At Space War Game,” *Defense News*, 28 February 2001, p.3 available at <http://www.nti.org/db/china/spacepos.htm>, (last visited Feb. 14, 2010).

⁷⁸ UN Doc. A/36/99, para.14,9 December 1981; Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.58

⁷⁹ Yuan Yi, Outer Space Security Reconsidered: an Analysis on China’s Constructing Security Norm, *Mainland China Studies*, Volume 52, Number 2, June 2009, p.14.

⁸⁰ *China’s EU Policy Paper*. <http://www.fmprc.gov.cn/eng/topics/ceupp/t27708.htm>, (last visited Feb. 14, 2010).

⁸¹ Yi Minghai, Jiang Hui, The strategic Aim and the of Chinese Outer Space Diplomacy (in Chinese 《中国外层空间外交战略目标与策略》), *Journal of Ocean University of China*, Social Sciences Edition, No. 2, 2009. p.

sides further state: “They underscore the importance of the conclusion of relevant international legal instrument on the prevention of the deployment of weapons in outer space through negotiations under the framework of the Conference on Disarmament in Geneva.”⁸²

(C) Enhancing international space cooperation

Cooperation is an overall principle under international law. According to the UN Charter, international cooperation, as a means of resolving various international problems, is proclaimed to be one of the main objectives of the UN.⁸³

Space cooperation is a very effective way of the confidence-building, because it can reduce mutual suspicion, increase mutual trust and achieve mutual benefits. It is of course also important for keeping the peace in outer space, as Jonathan F. Galloway said “In order to achieve peaceful purposes it is necessary to have international cooperation.”⁸⁴

China is making significant efforts to enhance international space cooperation with many countries and international organizations, in bilateral and multilateral; regional and international level. The result of the cooperation has been very productive and fruitful.⁸⁵ That will benefit the guarantee of common security⁸⁶ or collective security⁸⁷ of outer space. The aim of international space cooperation led by China is to peacefully develop and use space resources for the benefit of all mankind. China maintains that international space cooperation should be promoted and strengthened on the basis of equality and mutual benefit, mutual complementarity and common development.⁸⁸ As one of the initiators and host to the new established Asia-Pacific Space Cooperation Organization (APSCO)⁸⁹, China actively supports its work in all aspects and signed the host country agreement with APSCO in July 2009.⁹⁰

Conclusion

Normally, the protection of national interests is legitimate. The advancement of the national interests can be part of the advancement of the common interests of the mankind. But outer space is a special area, where the principle of the common

32-33.

⁸² Joint Statement of the People's Republic of China and the Russian Federation On Major International Issues Beijing, 23 May 2008. *available at* <http://www.fmprc.gov.cn/eng/zxxx/t465821.htm>, (last visited Feb. 6, 2010).

⁸³ He Qizhi, *Essays on International Law and Space Law*, China Institute of Space Law, p.324.

⁸⁴ See the presentation of Jonathan F. Galloway: “Dr Eilene M. Galloway and the Peaceful Uses of Outer Space”, presented at the 4th Eilene M. Galloway Symposium on Critical Issues in Space Law, Peaceful Purposes and Uses of Outer Space. December 10, 2009 Washington D.C., United States.

⁸⁵ He Qizhi, *Essays on International Law and Space Law*, China Institute of Space Law, pp.325-326.

⁸⁶ Detlev Wolter, *Common Security in Outer Space and International Law*, UNIDR, 2006. p.115.

⁸⁷ See Zhang Jing, China and Space Security, in John M. Logsdon and James Clay Moltz (eds.), *Collective Security in Space*, Asian Perspectives, 2008, p.83.

⁸⁸ *China's Space Activities*, English version see *Space Law Review*, vol.2-3, p. 298.

⁸⁹ The Convention of Asia-Pacific Space Cooperation Organization (“APSCO”) entered into force on October 12, 2006. So far, nine States, namely, Bangladesh, China, Indonesia, Iran, Mongolia, Pakistan, Peru, Thailand and Turkey have signed the Convention. See Zhao Haifeng, Current Legal Status and Recent Developments of APSCO and Its Relevance to Pacific Rim Space Law and Activities, *Journal of Space Law*, vol.35, Number 2. Winter 2009.

⁹⁰ Statement by H.E. Ambassador LIU Zhenmin at the Fourth Committee of the 64th Session of the UN General Assembly on Agenda Item 30: “International cooperation in the peaceful uses of outer space”(2009/10/21) *available at* <http://www.fmprc.gov.cn/eng/wjb/zwjg/zwbdt/621896.htm>, (last visited Feb. 14, 2010).

interests of humanity applies. If a country puts its national interests above the interests of other countries, above the interests of international communities, or above the interests of the humanity, then the conflict will happen. The best choice should be the compromise between the national interests and the interests of the humanity.

On the relation between the peaceful use of outer space and the national security in outer space, the key issue is the understanding national security. We should give up the traditional concept of national security, and adopt a new one, that is common security based on mutual trust, mutual benefit, equality and coordination, as the Chinese Ambassador to the CD said, what the world need is the “common security for all states” instead of “the absolute security enjoyed by a single state at the expense of all others” with regard to the military use of outer space.⁹¹

China pursues an independent foreign policy of peace, follows the road of peaceful development, works hard to combine the efforts to safeguard its own national interests and promote common interests of all countries, with the aim to build a harmonious world.

To sum up, Chinese understanding of “peaceful purposes”, which includes issues of the peaceful use of outer space, always opposes to the unlimited militarization and the weaponization of outer space. China’s Constitution clearly states that it is a mission for China to maintain international peace, and in international fora China has also consistently advocated the conclusion of treaties against the weaponization of outer space, and has made a lot of efforts for realizing it. We can conclude that Chinese initiatives in this regard does demonstrate what a responsible big developing country should act, and Chinese own space military capability development is also aimed to protect not only its national security, but also to defend at the end the common security and peace.

Because States are the masters of international agreements, the common views of different states, especially those of the space-faring nations are critical. In order to keep the world peaceful and to maintain the common security of outer space, the main space faring nations, like the US, Russia, China, the European countries and India, Japan, and other countries, should work together and try to find a commonly accepted solution for the conclusion of a legal instrument preventing weaponization of and an arms race in outer space.

⁹¹ The Chinese Ambassador to the CD called for the “common security for all states” instead of “the absolute security enjoyed by a single state at the expense of all others” with the military use of outer space. CD/PV.843,24 February 2000.
CD/PV.838,24 February 2000.