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DEVELOPING A EUROPEAN-CHINESE/RUSSIAN APPROACH TO THE ISSUE OF NON WEAPONIZATION OF OUTER SPACE: A FEASIBLE GOAL?

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ABSTRACT

Preventing the weaponization of outer space is one of the crucial issues of the current space law debates. The last few years have seen an increasing number of discussions on this issue in international fora, such as the UN Conference on Disarmament and the COPUOS. While it has not been possible to reach an agreed solution on how to efficiently deal with the problem of the weaponization of outer space, a large consensus on the need that something must be done has emerged. China and Russia, on the one side and the European Union, on the other, have taken the lead in this respect. While the former have submitted a proposal for a draft treaty demilitarizing outer space, namely the Draft Treaty on the Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects, the latter has issued a Draft Code of Conduct for Outer Space Activities. Despite the differences between these two proposals, this paper will examine the possibility to develop a common European-Chinese/Russian approach to the issue of the non-weaponization of outer space. Although such a goal is surely challenging, some factors of both political and legal nature induce to look at it with positive attitude.

INTRODUCTION

Notwithstanding the several references to the "peaceful uses of outer space" contained in the space law treaties, outer space has been increasingly used for military purposes. While the legality of certain passive military uses of space has received broad recognition, other military applications, such as the deployment in orbit of weapons with offensive capacity, are strongly opposed by the largest part of the international community. Preventing the so-called weaponization of outer space and ensuring the safety and security of outer space operations have become critical to the well being of States, especially taking into account the heavy reliance of modern societies on space assets and their applications.

The risk of progressively weaponizing outer space is directly connected to political, military and legal reasons. First of all, the need for protecting valuable space assets may induce States to develop and deploy space and ground-based weapons. Secondly, in recent years space technologies have become essential components of the military asset of the space powers and crucial tools for maintaining their national security. Maintaining military superiority is a factor which pushes for an increase in space weaponization.

While these two elements have the potential to significantly put at risk the security of the space environment, such a risk could be avoided if a strong international legal framework existed. However, a similar framework is missing. The Outer Space Treaty is deemed not to be adequate to

prevent the weaponization of outer space. As a consequence, efforts aimed at preserving the peaceful nature of outer space have increased. The two most notable initiatives have been taken by China and Russia, on the one side, and the European Union, on the other. While these two proposals are different in contents and legal forms, the present paper suggests the possibility to develop a Chinese, Russian and European common approach to the issue of the non-weaponization of outer space. Such a possibility is grounded on legal, political and strategic elements.

KEY TERMS AND CONCEPTS OF DISCUSSION

Before analyzing the possibility to develop a European-Chinese/Russian common approach to the issue of non-weaponization of outer space, some key terms and concepts used in the present paper, namely, "peaceful purposes"; "non-military", "non-aggressive" uses of outer space; "militarization" and "weaponization" of outer space need to be analyzed.

The Outer Space Treaty[1], which is the basic instrument governing the activities of States in outer space, refers to "the exploration and use of outer space for peaceful purposes[2]". The problem with the term "peaceful purposes" is that the Treaty does not define it. Two different interpreation this term, the first as "non-military"[3], the second as "non-aggressive"[4] have been proposed. In order to identify which one of the two is to be preferred reference is to be made to the 1969 Vienna Convention on the Law of Treaties, according to which "a treaty shall be interpreted according to the ordinary meaning, taking into account its context, objects and purposes, subsequent State practice, relevant rules of international law, the preparatory work and circumstances of its conclusion[5]".

The "non-military" approach holds that it is prohibited to use outer space for any military purpose. The supporters of this approach refer to the 1959 Antarctic Treaty, where the term "peaceful purposes" is intended to mean "non-military"[6]. While it is true that the text of the Antarctic Treaty influenced the drafting process of the Outer Space Treaty, interpreting "peaceful purposes" as "non-military" in the context of the latter seems to go beyond the "ordinary meaning" to be given to its provisions, particularly those Article IV which are specifically dedicated to the military uses of outer space[7]. Article IV makes a distinction between the legal regime applicable to celestial bodies and outer void space[8]. While certain categories of weapons are banned from the void outer space, celestial bodies are non-militarized. Therefore, the interpretation of "peaceful purposes", in its strictest sense, namely "non-military", may only be applicable to celestial bodies, but not to outer void space. In addition, the "non-military" approach is not supported by the practice of those States mostly concerned. The USA, which favored this approach at the beginning of the space era[9], soon turned to the non-aggressive doctrine. The USSR, while supporting the "non-military view", used satellites to carry out military activities in the guise of scientific research[10]. Not even the preparatory works of the Outer Space Treaty confirm the "non-military" doctrine. During the negotiation of the treaty a proposal to India proposed extending the application of "exclusively for peaceful purposes", as in Article IV, par.2, to all outer space areas was rejected[11].

The "non-aggression" approach holds that, as long as military activities in space are carried out in accordance with Article 2(4) of the UN Charter[12], which prohibits the threat and use of force, they are consonant with international law. This approach, the promoter of which is the United States, has

progressively gained support. In this regard, States have shown acceptance of certain passive military uses of outer space, such reconnaissance and surveillance, by making, thus, this type of military activities in space legal. Nevertheless, while States have acquiesced to those passive military uses of space, weaponization of outer space has never been accepted[13]. Indeed, the deployment of weapons of offensive nature in space or on the ground with their intended target located in space, is regarded as one of the biggest threat to humanity. Although outer space law does not contain a specific prohibition to the placement of weapons in space, apart from the prohibitions set out in Art. IV, par. 1 of the Outer Space Treaty, this absence cannot be used to justify the weaponization of outer space. In this respect, as pointed out by Manfered Lachs, "if peaceful uses was intended to forbid aggressive uses only, mere reference to international law and the Charter of the United Nations would have sufficed[14]". As rightfully indicated by G. Gál, peaceful is more than antithesis of war[15]; the peaceful nature of an action does not result from absence of aggression but from the intent of promoting international cooperation and coexistence.

States could try to justify the weaponization of outer space on grounds of national security and on self-defense. While the preservation of national security is a legitimate right of each State, it does not appear as a valid reason to place weapons in outer space and undermining its peaceful nature. Self-defense is an inherent right of States, recognized by Art. 51 of the UN Charter, which enables them to temporarily violate the prohibition of the use of force in case an armed attack occurs[16]. The legality of self-defense is to be tested with the principle of necessity and proportionality. Without going deeply into the analysis of this point, in situations not amounting to necessity of self-defense, deploying space weapons would appear illegal. Even by trying to justify this deployment under the anticipatory self-defense theory, it is doubtful that in the absence of an imminent and concrete threat, such a deployment could be seen legal.

In conclusion placing weapons in space in situations short of self-defense should be considered as an action in violation of the general principles of international law requiring States to maintain international peace and security. Such a placement not only would likely fuel an arms race in space but also would modify the current strategic balance under the mutual assured destruction philosophy. In addition, the testing and deployment of space weapons would likely to generate a large number of space debris leaving, thus, less room for civilian uses of outer space.

SPACE LAW AND THE NON-WEAPONIZATION OF OUTER SPACE

The use of outer space for peaceful purposes is regulated by a body of UN-based legal instruments, including inter alia five multilateral treaties. Apart from these instruments, there are a number of arms control and disarmament agreements, such as the 1963 Partial Test Ban Treaty, which have an impact in preserving the peaceful character of the space environment. After the USA withdrew from the Anti-Anti-Ballistic Missile Treaty[17], which expressly prohibits development, testing and deployment of sea-based, air-based, space-based and mobile land-based Anti Ballistic Missile Systems, the Outer Space Treaty remains the only international treaty limiting weaponization of outer space. However, there is a large consensus on its inability to halt the progressive weaponization of outer space.

The most relevant provisions of the treaty concerning the military uses of outer space

are contained in Article IV. As mentioned in the previous section, the treaty does not consider the weaponization of outer space per se illegal[18]. What the treaty does is to place limits on the type of weapons to be deployed in space and to set out two different legal regimes regarding the void outer space, on the one side, and the Moon and other celestial bodies, on the other. As to the latter, Article IV, par. 2 makes clear that military activities on the Moon and other celestial bodies, including weapon deployment, unless undertaken for exclusively peaceful purposes, are prohibited. In this respect, the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies are banned. Military personnel are allowed on the Moon and other celestial bodies as long as they carry out scientific research or any other peaceful purpose. Determining whether or not a military action is exclusively peaceful is a matter of manifest intent[19]. For example, the deployment of a space weapon, in the absence of a special set of justifying circumstances, will clearly manifest intent of non-exclusive peaceful purposes.

Unlike the Moon and other celestial bodies, the void outer space is not subject to such a strict regime concerning military activities and deployment of weapons. Article IV, par. 1, only prohibits the deployment if nuclear weapons and weapons of mass destruction (WMD) in outer space, including celestial bodies. Therefore, if reads it literally, Article IV does not prohibit the deployment and use of conventional weapons and the transit of ballistic missiles which temporarily fly through outer space. In addition, issues like threat or use of force from Earth against space objects and implementation procedures and verification mechanisms are unaddressed.

Considering the above limits of the existing space law legal framework, the majority of States and legal experts[20] deem such a framework not adequate to prevent the weaponization of outer space, particularly taking into consideration the increasing number of space operators and the economical ad military value of space assets. However, such an opinion is not shared by everybody. The US has so far strongly opposed to any action aimed at amending the existing space law rules dealing with military uses in space. According to the US view, the current regime is longstanding and effective and rather than entering into new multilateral agreements that are unnecessary, universal acceptance and compliance with the existing agreements should be sought[21]. In addition, the US adds that there is no race in space[22]. Hence, there is neither need for any new instrument nor any problem for arms control to solve[23]. It is certainly true that there is no space arms race at the moment. However, this is not a good reason for not taking preventive actions to prevent the weaponization of outer space.

PREVENTING THE WEAPONIZATION OF OUTER SPACE: THE CHINESE/RUSSIAN AND EU PROPOSALS

Efforts aimed at preventing the weaponization of outer space date back to the early 1980's. In 1981 the USSR introduced the topic of the prevention of an arms race in space into the agenda of the 36th UN General Assembly and also submitted to the UN a "Draft Treaty on the Prohibition of the Stationing of Weapons of any kind in Outer Space"[24]. This Draft Treaty was not successful mainly due to the opposition of the US which considered it to provide advantages to the USSR as a consequence of its anti-satellite (ASAT) capacity[25]. The initiative of the USSR had,

anyway, the effect to focus the attention of the UN members on the issue of the prevention of a space arms race. This was reflected in the adoption by the UNGA of a resolution on the Prevention of an Arms Race in Outer Space (PAROS) in 1981[26].

In spite of the initiatives undertaken within the UNGA, the main forum of discussion for the prevention of weaponization of outer space is the Conference on Disarmament (CD). PAROS was inserted as an agenda item in 1982 and, between 1985 and 1994, an *ad hoc* committee on PAROS was set up. Problems related to the working method to be followed, issues to be addressed and possible solutions, led the activities of the *ad hoc* committee as well as the efforts undertaken by the CD after its dissolution to a failure and a compete standstill. This fact created the need for an alternative forum to discuss PAROS. Despite the objection by several delegations, which considered the CD the only appropriate forum for disarmament issues[27], COPUOS was chosen as being this alternative forum. In recent years an item entitled "Ways and Means of Maintaining Outer Space for Peaceful Purposes" has been added to the COPUOS agenda and concerns about the weaponization of space have been voiced by States during the COPUOS meetings[28].

In the last decade efforts aimed at preventing an arms race in space have multiplied, as a result of a series of events which sounded as a warning alarm. In 2002 the US withdrew from the Anti-Ballistic Missile Treaty, in 2006 the US adopted a space policy which foresaw the possibility to deny access to space to enemy States, and in 2007 and 2008 China and the US successfully performed ASAT tests[29].

The two most significant initiatives on PAROS have been taken by China and Russia, on the one side, and by the European Union, on the other. The former have proposed a Draft Treaty on the Prevention of the Placement of Weapons in Outer Space, the latter has issued a Code of Conduct for space activities.

THE CHINESE/RUSSIAN 2008 DRAFT TREATY

In February 2008 China and Russia jointly submitted to the CD a Draft Treaty on the Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects (PPWT)[30]. The text of the PPWT is mainly based on a working paper introduced to the CD by these two States in 2002[31]. The PPWT specifically aims at preventing the weaponization of outer space. In this respect, the core provision is contained in Art. II, which reads: "The State Parties undertake not to place in orbit around the Earth any object carrying any kinds of weapons, not to install such weapons on celestial bodies and not to place such weapons in outer space in any other manner; not to resort to the threat or use of force against outer space objects; and not to assist or induce other States, groups of States or international organizations to participate in activities prohibited by this Treaty". The PPWT contains provisions that guarantee that the treaty cannot be interpreted as impeding the rights of States to explore and use outer space and to exercise their inherent right of self defense (Art. IV and V). Interestingly, the PPWT includes, inter alia, a definition of weapons in outer space (Art. I (c))[32]. Compliance with the treaty provisions should be enforced by an Executive Organization, considering complaints of treaty violations, organizing and conducting consultation with State parties and taking measures to put an end to the violation of the treaty (Art. VIII). Verification is put on hold by foreseeing the possibility of subsequent negotiation of an additional protocol (Art. VI). In order to ensure compliance and to promote

transparency and confidence-building State parties are encouraged to practice, on a voluntary basis, confidence-building measures (Art. VI).

Several shortcomings of the PPWT have been identified. One of the main criticism concerns its lack of provisions on ground-based ASATs. The PPWT allows research, development, production and terrestrial storage of ASATs and does not explicitly prohibit their testing and development. Only the threat or use of them against space objects for hostile purpose is explicitly prohibited. In order to increase its chances of success and, in particularly, to obtain the favour of the US, the PPWT needs to ban space-based weapons and ground-based ASATs in parallel. Consensus on this point is, however, developing. Russia and China has recognized a provision banning ASATs as a possible amendment to the text of the PPWT[33]. China is also open to proposals establishing a world-wide ban on ASATs[34]. Additionally, while prohibiting the deployment of space-based weapons, the PPWT does not prohibit research, development, production and terrestrial storage. Problems also exist with regard to the so-called dual-use systems, due to the fact that they are not specially produced or converted to destroy object in space and that, thus, they do not fall within the definition of weapons in space provided by the PPWT. Another major problem of the PPWT concerns the absence of a verification mechanism. Such an absence may significantly weaken the capacity of the PPWT to protect outer space objects and to prevent the weaponization of outer space. A compilation of comments and suggestions on the PPWT made by member States and observer delegations to the CD, reveals that the Chinese/Russian initiative is widely appreciated and it is considered a good starting point for a new international convention on prohibiting space weaponization[35]. Other delegations have, however, opposed to it. The US considers it as a tool to allow China and Russia to gain military advantage on the US[36]. In addition, the US deems unacceptable the clause of the PPWT according to which amendments shall be approved by a majority of State parties (Art. X). Clearly, the opposition of the US reduces the chances of success of the PPWT and its possibility to become the optimal instrument to prevent the weaponization of outer space.

THE EU DRAFT SPACE CODE OF CONDUCT

The Council of the European Union endorsed, in its Conclusions of 3 December 2008, a Draft Code of Conduct for Outer Space Activities[37]. The Code of Conduct is a typical soft-law instrument, to be implemented on a voluntary basis by the subscribing States, which, in itself, does not establish any binding obligation.

The Code consists of a Preamble and 12 Articles. The Preamble, while stressing the fact that subscribing States shall promote international cooperation and the widest adherence to the international instruments protecting the peaceful uses of outer space, points out that a comprehensive approach to safety and security in outer space should be guided by the principles of: freedom of access to space for peaceful purposes, (ii) preservation of the security and integrity of space objects in orbit, (iii) due consideration for the legitimate defense interests of States.

The Code is characterized by its encompassing scope. Indeed, it applies to military as well as civil operations in outer space. Taking into consideration the hazardous nature of space activities and the usefulness of taking preventive measures, the Code prescribes State to establish and implement policies and procedures to minimise the possibility of accidents in space, collisions between space objects or

any form of harmful interference and, when executing manoeuvres of space objects in outer space, to take all reasonable measures to minimise the risks of collision (Art. 4.1 and 4.3). States shall also refrain from intentional destruction of space objects and any activity which may generate long-lived space debris (Art. 5). With regard to the issue of space security, the Code, while underlining the responsibility of States to prevent outer space from becoming an area of conflict (Art. 2), it obliges States to refrain from "any intentional action which will or might bring about, directly or indirectly, the damage or destruction of outer space objects unless such action is conducted to reduce the creation of outer space debris and/or justified by imperative safety considerations" (Art. 4.2). States are also encouraged to share information about their space national policies and space activities. In addition, compliance and verification are ensured through a consultation and investigation mechanism. The first entitles States to request consultation when an action by another subscribing State is deemed to violate the Code (Art. 9.1); the second is to be agreed on a later stage but could be based on national information or means of investigation provided on a voluntary basis (Art. 9.2). Biannual meetings to verify implementation of the Code provisions are also envisaged (Art. 10.1).

While the Code represents a significant step towards enhancing safety and security of space activity, some negative features may be identified[38]. Unlike the PPWT, the Code does not contain "definitions" of key terms. This aspect, which gives advantages in the negotiation phase, precludes the Code from specifying actions, situations and spatial conditions. Moreover, while Art. 4.2 lays down specific debris mitigation guidelines, Art. 4.3 soften them by allowing manoeuvres as long as measures to minimize the risk of collision have been taken. Article 4.2 generates two additional issues. The first is that a national security prerogative is not an expressly authorized reason for the production of space debris[39]. This may be considered an unacceptable restriction by certain States. The second issue refers to the risk that Art. 4.2 may favour the proliferation of anti-satellite weapons[40].

DEVELOPING A CHINESE, RUSSIAN, EUROPEAN COMMON APPROACH TO(ON) THE PREVENTION OF THE WEAPONIZATION OF OUTER SPACE

Preliminary considerations

The purpose of this paper is to suggest the possibility to develop a Chinese, Russian and European common approach to the prevention of weaponization of outer space. Taking into account the tremendous impact that these States have on space activities, for example China and Russia are deemed to be two of the States with the potential of weaponizing outer space, it is self-evident that a joint proposal of the three international subjects would be highly significant and could not be simply disregarded or refused without valid arguments by other international actors, i.e. the United States. The main questions, then, are: why China, Russia and the EU should frame a common proposal to avoid the weaponization of outer space and preserve the safety and security of space assets? What form and contents such proposal should take?

Political elements in favour of a Chinese, Russian, European common approach

At first sight developing a Chinese/Russian and European common proposal on the prevention of weaponization of space appears very challenging. Not only these States have submitted different types of legal instruments, a hard law instrument in

the case of China and Russia, a soft law instrument in the case of the EU, but also they have followed two different approaches, the first one focused on the prevention of deployment and use of space weapons (China and Russia) the second one, more broad encompassing (EU). Nevertheless, political and legal reasons supporting the setting up of a common approach among this group of States can be identified. First of all, China, Russia and the EU share the same goal, namely the prevention of weaponization of outer space. Although China and Russia have been more active than the EU in international fora in proposing solutions to the issue of space weaponization, they all are committed in making their best efforts to preserve the peaceful character of the space environment. Secondly, both the Chinese/Russian and the EU proposals have received mixed reviews. This leads to the conclusion that these proposals, at least in their original formulation, have no or little chance to gain universal acceptance. On the contrary, a common proposal which combine the good elements of these two approaches might have better chances of success.

Thirdly, if China, Russia and the EU were able to propose a balanced and well structured proposal on the prevention of outer space weaponization, the benefits for these three countries in terms of international prestige and respect would be remarkable. Other States would look at them as the leaders in the international efforts aimed at preserving the peaceful nature of outer space and guaranteeing the right to freely access, explore and use outer space. Fourthly, the cooperation among China, Russia and the EU in space related issues could take advantage of the fact that these countries have long-standing political and economic relations. Considering the fundamental contribution of space assets to the good functioning of their economies and societies, a valuable proposal capable of protecting these assets would be clearly in the interests of China, Russia and the EU.

Legal elements in favour of the Chinese, Russian, European common approach

Despite their differences, the texts of the PPWT and of the EU Code of Conduct present several similarities. Both instruments point out the responsibility and commitment of States in preventing its weaponization and make clear that none of their provisions is intended to undermine the freedom to explore and use outer space and the right of self-defence.

While the PPWT prohibits the placement of weapons in orbit and the Code does not, both text declare the illegality of attacks against outer space objects[41]

Interestingly, the PPWT foresees the possibility for States to promote transparency and confidence building measures to facilitate compliance. Such a choice clearly reflects the spirit of the EU Code. Additionally, both texts include consultations mechanism, although the features of such mechanism are rather different.

A Chinese, Russian, European common proposal on the prevention of weaponization of outer space

After having discussed political and legal elements in favour of the creation of a Chinese, Russian and European common proposal to prevent the weaponization of outer space, it is time to analyze how this option could be developed in practice. The present paper suggests that this common proposal should take the form of a code of conduct and that the EU Code of Conduct for space activities should be used as a model. Many could not agree with the idea of proposing a soft law instrument and could wonder why China and Russia should

renounce to their "treaty-hard law" approach.

First of all, negotiating and obtaining international consensus on the text of a treaty, particularly on sensitive issues such as arms control and disarmament, is very difficult and time consuming. It is also possible that, by the time a treaty enters into force, its usefulness and positive impact may be significantly reduced. Considering the opposition of the US to the PPWT, proposing a treaty does not seem the optimal solution to deal with the issue of space weaponization. In addition, in the last thirty years space law has developed through soft law; therefore, the idea of inserting a Chinese, Russian and European common proposal in a soft law instrument should not appear so surprising.

Secondly, a soft law instrument, such as a Code of Conduct, may contribute to promote openness and to build confidence in outer space activities, so as to ensure transparency in the use of outer space, to avoid collision or interference, to avoid conflicts and to prevent the deployment of weapons in space[42]. Transparency and confidence-building measures (TCBM) minimize the risk of erroneous perception of military activities and facilitate the management of situations which could lead to international tensions. However, TCBMs are neither a substitute for the measures of arms control and disarmament, nor can replace verification mechanisms[43]. In addition, the rules contained in a soft law instrument not only may turn into customary rules, as a result of State practice and compliance with them, but may be also inserted in the text of a treaty in a later moment. In this respect, on one hand, the EU has declared that the its Code of Conduct is not alternative to other proposals, such as the PPWT, and that is should be seen as a way for favouring the adoption of voluntary guidelines as a first step towards an international binding treaty[44]; on the other hand, China and Russia, while supporting a treaty approach, do not reject a priori other legal instruments as long as they are effective.[45]China and Russia also consider TCBMs useful means to reduce probability of emergence of sudden military threats in space as well as a tool towards the adoption of a treaty on the prevention of the placement of weapons in space and threat or use of force against outer space objects[46].

Thirdly, developing the Chinese, Russian and European common proposal in the form of a Code of Conduct would give it a high chance to be positively received at international level. In particular, such a Code could encounter a positive response by the US which, in the light of their new Space Policy, is ready to consider proposals for arms control measure if they are equitable, effectively verifiable and enhance the US national security[47].

Elements of the Chinese, Russian and European common proposal

The Chinese, Russian and European common proposal should maintain the same approach followed by the EU Code of Conduct, namely to have an encompassing scope which covers military and civilian uses of space, so as to ensure safety and security of space assets and the prevention of the weaponization of the space environment. In this respect, provisions on sharing of information, prevention of creation of space debris, consultation and verification mechanisms, structured on those included in the EU Code, should be inserted in the common proposal.

In order to be successful this proposal should not only incorporate the positive elements of the PPWT and the EU Code of Conduct but also avoid their negative aspects. First of all, taking into account the criticisms raised against the PPWT and the EU Code of Conduct, a specific provisions

banning ASATs, use, test and development should be included. The insertion of a similar clause in the text of the common proposal could be facilitated by the already mentioned willingness of China and Russia to incorporate a dedicated provision to ASATs in the PPWT. A provision banning ASATs would not be enough to guarantee space safety and security. This purpose could be hopefully achieved only by including in the common proposal, together with an Article modelled on Art. 4.2 of the EU Code of Conduct, a prohibition on the placement of any type of weapons in orbit and on the celestial bodies. In addition, provisions forbidding the use of space objects against objects on Earth as well as any test or use of satellites as weapons capable to damage or destruct other space objects should be inserted in the text of the common proposal.

CONCLUSION

Preventing the weaponization of outer space has become a priority for the international community. In recent years, proposals and initiatives aimed at preserving the peaceful nature of outer space have multiplied. In this regard, China, Russia and the EU have taken the lead by submitting, respectively, a Draft Treaty and a Draft Code of Conduct. Due to the partial failure of these instruments, the present paper proposes to develop a Chinese, Russian, European common proposal aimed at avoiding the weaponization of the space environment. Although this group of States has not declared the intention to proceed in this direction, there are signs and elements which may make this cooperation a feasible option.

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[1] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 18 U.S.T. 2410; TIAS 6347; UNTS 205.

[2] Outer Space Treaty, Preamble, section 2 and 4, Article IV.

[3] This view is supported by authors like: "M.G. Markoff, "Disarmament and peaceful purposes provisions in the 1967 Outer Space Treaty", (1976) J. Space L. 4; I.A. Vlasic, "Disarmament decade, outer space and international law", (1981) Ann. Air & Sp-L. 26; C.Q. Christol, "The common interest in the exploration, use and exploitation of outer space for peaceful purposes: the Soviet-American dilemma", (1984), Akron L.Rev. 193.

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[5] Article 31, 1969 Vienna Convention on the Law of Treaties.

[6] Antarctic Treaty, Preamble, Article 1 and IV.

[7] Outer Space Treaty, Art. IV: "State Parties to the Treaty undertake not to place in orbit around the Earth any object carrying nuclear weapons or any other kind of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manners. The Moon and other celestial bodies shall be used exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapon 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 purpose shall not be prohibited...".

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[11] U.N. Doc. A/AC.105/PV.3 (Mar. 20, 1962), 63.

[12] The United Nations Charter, Art. 2 (4), "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 Nations".

[13] I.e. in 2004, the PAROS resolution reserving outer space for peaceful purposes was adopted by 178

countries, with Israel, Haiti, Palau and the US abstaining (UNGA Res. 59/65).

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[16] The United Nations Charter, Art. 51, "Nothing in the present Charter shall impair the inherent right of individual and collective self-defense if an armed attack occur against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security".

[17] Treaty on the Limitation of Anti-Ballistic Missile Systems, Art. V, May 26, 1972, 23 UST. 3435, 944 UNTS 13.

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[24] UN Doc. A/36/192 (1981).

[25] C. Christol, *supra* footnote 3 at 222.

[26] UNGA Res A/Res/36/97, part c (1981).

[27] L. Stojak, "The non-weaponization of outer space", (2002), prepared for the International Security Research and Outreach Programme, available at: http://www.international.gc.ca/.

[29] The Chinese and US ASAT tests took place, respectively, on January 11, 2007 and February 21, 2008.

[30] The text of the Draft Treaty is available at: http://www.reachingcriticalwill.org/political/cd/papers08/1session/Feb12%20Draft%20PPWT.pdf.

[31] 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 (CD/1679).

[32] PPWT, Art. I, (c): the term weapons in outer space means any device placed in outer space, based on any physical principle, which has been specially produced or converted to destroy, damage or disrupt the normal functioning of objects in outer space, on the Earth or in the Earth's environment, or to eliminate a population or components of the biosphere which are important to human existence or inflict damage on them.

[33] CD/1818, p. 23, para. 158.

[34] Zero-weapons outer space: foundation for a safer space environment. Presentation by Chinese Delegation at the UNIDIR Conference on space security 2009, available at: http://www.mfa.gov.cn/eng/wjb/zzjg/jks/kjfywj/t575050.htm.

[35] See generally CD/1818.

[36] CD/1847.

[37] The text of the EU Code of Conduct is available at: http://register.consilium.europa.eu/pdf/en/08/st17/st17175.en08.pdf.

[38] ESPI Report on Space Security, 2009, available at: http://www.espi.or.at/index.php?option=com_content & view=article&id=21&Itemid=25.

[39] Canada, working paper "On the merits of Certain Draft Transparency and Confidence-Building Measures and Treaty Proposals for Space Security", CD/1865, (2009).

[40] *Ibidem.*

[41] Art. II, PPWT & Art. 4.2 EU Code.

[42] Letter from the Russian Representative to the Conference of Disarmament, CD/1710, (2003).

[43] Conference on Disarmament, WP CD/1778 (2006).

[44] S. Marchisio,"The EU Draft for a Code of Conduct for Outer Space Activities, presented at the Harbin Symposium on the military use of outer space, Harbin, China, (July 2010).

[45] CD/1778, *supra* footnote 43.

[46] *Ibidem.*

[47] National Space Policy of the United States of America, June 28, 2010.