

COMMENTARY

NATIONAL SPACE LEGISLATION IN MAINLAND CHINA

*Yun Zhao**

1. INTRODUCTION

China launched its first satellite (DFH-1) by Long March vehicle in 1970 and became full member of the United Nations Committee on Peaceful Uses of Outer Space (UNCOPUOS) ten years later. Due to historical reasons, China has so far concentrated on technological development in outer space; development of and research in space law has been lagging far behind. However, China has, on various occasions, acknowledged the importance of space law in the development of space exploration and has taken efforts to improve in this area. The UNCOPUOS membership has accelerated China's pace in space legislation. The Chinese Government ratified the Outer Space Treaty¹ in 1983 and the other three space treaties (except the Moon Agreement) in 1988.²

* Associate Professor, Faculty of Law, University of Hong Kong; PhD, Erasmus University Rotterdam, the Netherlands; LLM, Leiden University, The Netherlands; LLM, LLB, China University of Political Science and Law, Beijing.

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.S.T. 205 (entered into force Oct. 10, 1967) [hereinafter the Outer Space Treaty]. China acceded to the Outer Space Treaty on December 30, 1983.

² Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space, Apr. 22, 1968, 19 U.S.T. 7570, 672 U.N.T.S. 119 [hereinafter Rescue Agreement]; Convention on International Liability for Damage

Efforts in developing national space legislation started around 1994; but most substantial work was carried out after 1998 when China reformed its administrative system for the industries. Currently, there are no national space laws in China. But several regulations have been implemented concerning registration and launching of space objects: the Provisions and Procedures for the Registration of Space Objects on February 8, 2001³; and the Interim Measures on the Administration of Permits for Civil Space Launch Projects on November 21, 2002⁴. China's ambitious plan to reach out to the Moon and other, less ambitious, space projects underscores the urgent need for national space legislation.

2. SPACE POLICY

China's space activities aim to explore outer space, and enhance understanding of the Earth and the cosmos; to utilize outer space for peaceful purposes, promote human civilization and social progress, and benefit the whole of mankind; to meet the demands of economic construction, scientific and technological development, national security and social progress; and to raise the scientific quality of the Chinese people, protect China's national interests and rights, and build up the comprehensive national strength.⁵

The principles to be followed for the development of China's space industry, as identified in the White Paper on China's Space Activities in 2006, are as follows: maintaining and serving the country's overall development strategy, and meeting the

Caused by Space Objects, Mar. 29, 1972, 24 U.S.T 2389, T.I.A.S No. 7762 [hereinafter Liability Convention]; and the Convention on Registration of Objects Launched into Outer Space, Jan. 14 1975, 28 U.S.T. 695, 1023 U.N.T.S. 15 [hereinafter Registration Convention]. China acceded to the Rescue Agreement on December 14, 1988, the Liability Convention on December 12, 1988, and the Registration Convention on December 12, 1988.

³ Order No. 6 of the Commission of Science, Technology, and Industry for National Defense of the People's Republic of China, February 8, 2001.

⁴ Order No. 12 of the Commission of Science, Technology, and Industry for National Defense of the People's Republic of China, November 21, 2002.

⁵ The State Council Information Office, China's Space Activities in 2006 (White Paper), Beijing, China (Oct. 2006), <http://www.china.org.cn/english/features/book/183672.htm> (hereinafter 2006 White Paper).

needs of the state and reflecting its will; upholding independence and self-reliance policy, making innovations independently and realizing leapfrogging development; maintaining comprehensive, coordinated and sustainable development, and bringing into full play the functions of space science and technology in promoting and sustaining the country's science and technology sector, as well as economic and social development; adhering to the policy of opening up to the outside world, and actively engaging in international space exchanges and cooperation.⁶ The above aims and principles apply generally to national space legislation in China.

It is also to be noted that international cooperation is elaborated in a separate part in the White Paper in 2000, implying that China attaches great importance to space cooperation in various levels.⁷ This principle has been further confirmed in the 2006 White Paper on China's Space Activities.⁸ In this White Paper, China clarifies the following policies with regard to developing international space exchanges and cooperation: adhering to the principle of independence and taking the initiative in our own hands, carrying out active and practical international cooperation in consideration of the overall, rational utilization of domestic and international markets and resources to meet the needs of the national modernization drive; supporting activities regarding the peaceful use of outer space within the framework of the United Nations; attaching importance to space coopera-

⁶ *Id.*

⁷ The State Council Information Office, China's Space Activities in 2000 (White Paper), Beijing, China (Nov. 2000). <http://www.spaceref.com/china/china.white.paper.nov.22.2000.html>. Guiding principles for international cooperation are: the aim of international space cooperation is to peacefully develop and use space resources for the benefit of all mankind; international space cooperation should be carried out on the basis of equality and mutual benefit, mutual complementarity and common development, and the generally accepted principles of international law; the priority aim of international space cooperation is to simultaneously increase the capability of space development of all countries, particularly the developing countries, and enable all countries to enjoy the benefits of space technology; necessary measures should be adopted to protect the space environment and space resources in the course of international space cooperation; the function of the United Nations Office of Outer Space Affairs (OOSA) should be consolidated and the outer space application programs of the United Nations should be backed up.

⁸ 2006 White Paper, *supra* note 5.

tion in the Asia-Pacific region, and supporting other regional space cooperation around the world; reinforcing space cooperation with developing countries, and valuing space cooperation with developed countries; encouraging and endorsing the efforts of domestic scientific research institutes, industrial enterprises, institutions of higher learning, as well as social organizations to develop international space exchanges and cooperation in different forms and at different levels under the guidance of relevant state policies, laws and regulations.⁹

3. ORGANIZATION OF NATIONAL SPACE ACTIVITIES

China National Space Administration (CNSA) was established as a government institution to develop and fulfill China's due international obligations, with the approval by the 8th National People's Congress (NPC) of China. The 9th NPC assigned the CNSA as an internal structure of the Commission of Science, Technology and Industry for National Defense (COSTIND). The CNSA assumes the following main responsibilities: signing governmental agreements in the space area on behalf of organization, inter-governmental scientific and technical exchanges; and also being in charge of the enforcement of national space policies and managing the national space science, technology and industry.¹⁰ Accordingly, the CNSA is the main administrative body in charge of national space industry and civil space activities; it is also the most important authority responsible for preparing space legislation, formulating policies for space industry and technology, making plans for space development and setting standards in these areas.¹¹

There are four departments under the CNSA: Department of General Planning, Department of System Engineering, Department of Science, Technology and Quality Control, Department of Foreign Affairs.¹²

⁹ *Id.*

¹⁰ China National Space Administration, <http://www.cnsa.gov.cn> (last visited Dec. 6, 2007).

¹¹ *Id.*

¹² *Id.*

4. CURRENT LEGAL FRAMEWORK FOR SPACE ACTIVITIES

4.1. Registration of Space Objects

The Provisions and Procedures for the Registration of Space Objects, published in 2001 by the COSTIND and the Ministry of Foreign Affairs (MFA), is the first domestic administrative regulation adopted by China on space activities. The main purpose of this regulation is to fulfill China's commitments under the Registration Convention, while taking into account the practical situation in China.

All the space objects launched within the territory of China, or launched abroad but with China as a co-launching State, shall be registered with the COSTIND within 60 days after the space objects were launched into orbit. The COSTIND should maintain the National Registration Booklet. Modification to the registration shall be done within 60 days after the change of the relevant circumstances, such as changes of orbit, disintegration, end of operation, or re-entry into atmosphere. The COSTIND shall provide to the MFA relevant registration data within 60 days after domestic registration; the MFA will then register with the United Nations Secretary-General. With regard to the special case of Hong Kong and Macao, a special Sub-Registration Booklet shall be established with the registration procedure to be stipulated separately.¹³

4.2. Licensing of Launch Services by Private Enterprises

The Interim Measures on the Administration of Permits for Civil Space Launch Projects, released by the COSTIND in 2002, established the licensing regime for all spacecraft launches within the territory of China, excluding launches for military purposes and the entry of such spacecrafts over which the natu-

¹³ Xiaohong Liu & Xiaoqing Wang, *The First Administrative Regulation on Space Activities in China*, UNITED NATIONS/INTERNATIONAL INSTITUTE OF AIR AND SPACE LAW (IIASL) WORKSHOP ON CAPACITY BUILDING IN SPACE LAW (The Hague, Nov. 18-21, 2002). The registration procedure include open end; possibility of being amended after certain period of implementation; and possibility of being upgraded into administrative law or regulation in the future. *Id.*

ral persons, legal persons or other organization of China have had property or have property by means of on-orbit delivery into the outer space from outside of the territory of China.¹⁴ The COSTIND is the authority responsible for examining, approving and supervising all civil space launch projects.¹⁵

The general project contractor should apply to the COSTIND with relevant documents nine months before the prearranged month for the launch of the project.¹⁶ The COSTIND should organize the examination of the project within 30 days as of receipt of the application documents and notify in writing the applicant and the relevant departments of the decisions.¹⁷ The permit should include the following: the name of the applicant and its legal representative, the registration address of the applicant's domicile, main contents of the project, the prearranged time for launch, validity period of the permit, the organ issuing the permit and the time of issuance.¹⁸ An application for modification or cancellation should be filed 90 days before the expiry of the validity period of the permit.¹⁹

The permit holder must purchase the third party liability insurance and other relevant insurances for launching a space object.²⁰ For a project in the stage of a domestic executive launching site, the permit holder shall report the launching plan 6 months before the prearranged month for launch and file an application for approval to leave the factory with relevant materials before entering the stage of a launching site.²¹

The Interim Measures prescribed administrative penalties and criminal liabilities for acts such as concealing the truth, practicing fraud, damaging the interests of the State, undertak-

¹⁴ Decree of the Commission of Science, Technology, and Industry for National Defense of the People's Republic of China (Interim Measures on the Administration of Permits for Civil Space Launch Projects), No.12, Nov. 21, 2002, at art. 2, available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/InvestmentDirection/GuidanceforSpecificIndustries/t20060620_51408.jsp.

¹⁵ *Id.* at art. 4.

¹⁶ *Id.* at arts. 5-6.

¹⁷ *Id.* at art. 7.

¹⁸ *Id.* at art. 10.

¹⁹ *Id.* at art. 13-14.

²⁰ *Id.* at art. 19.

²¹ *Id.* at art. 20.

ing projects without authorization, neglecting duties or abusing powers resulting in losses caused to the State.²²

4.3. National Legal Barriers to International Transfer of Space Technology

For a complete understanding of Chinese space legislation at the present stage, it is important to note some regulations relating to military space activities.²³ The Regulations on Control of the Military Products Export, first enacted in 1997 and revised in 2002, were introduced to strengthen unified management of military products export.²⁴ Several guaranties must be satisfied before allowing the export of military products: the product must be useful to the self-defense capability of the recipient country; not being harmful to the peace, security and stability of the relevant region of the world; not interfering in the recipient country's internal affairs.²⁵ As required by the above Regulation, the COSTIND and the People's Liberation Army (PLA) General Armament Department (GAD) further drafted the Military Products Export Control List in 2003,²⁶ which includes launch vehicles, missile weapon systems and military satellites.²⁷

To further strengthen export control system and prevent the proliferation of missiles and other delivering systems that can be used to deliver weapons of mass destruction,²⁸ the State Council published the Regulations of the People's Republic of China on Export Control of Missiles and Missile-related Items

²² *Id.* at arts. 24-26.

²³ List of Chinese Language Statements and Documents, available at <http://www.nti.org/db/china/chindoc1.htm> (last visited Dec. 11, 2007).

²⁴ Regulations on Control of the Military Products Export, Oct. 22, 1997, at art. 1, available at <http://cns.miis.edu/research/china/chiexp/regmpe.htm>.

²⁵ *Id.* at art. 5.

²⁶ Regulations on Control of the Military Products Export, Article 2(2), provides that the military products export control list shall be formulated, adjusted, and promulgated by the state department in charge of military products export. *Id.* at art. 2(2).

²⁷ Category 8 of the Military Products Export Control List, Mar. 21, 2003, available at <http://news.sohu.com/97/87/news207378797.shtml> (last visited Dec. 11, 2007).

²⁸ Regulations on Export Control of Missiles and Missile-related Items and Technologies, Aug. 25, 2002, at art. 3, available at http://www.nti.org/db/china/engdocs/expreg_0802.htm.

and Technologies in 2002, together with the Missiles and Missile-related Items and Technologies Export Control List. According to the Regulations, rockets, unmanned air vehicles, missiles (ballistic and cruise missiles) and missile-related items and technologies are subject to export control.²⁹

A licensing regime is established for the export of the above items and technologies. The exporter should apply to the competent foreign economic and trade department of the State Council with the export application form and relevant documents. The above department shall examine the application (possibly joined by other relevant departments of the State Council and of the Central Military Commission) and make a decision within 45 days after the receipt of the application.³⁰ The regulation also provides for possible administrative penalties and criminal liability for certain acts.³¹

5. FURTHER DEVELOPMENT

Space legislation is, at the moment, among the highest priorities on the CNSA's agenda. A special task force was set up under the CNSA to study the issue of national space legislation. It has been agreed that space legislation in China should move gradually.

The administrative structure and code of conduct concerning space activities in China are still in the process of development; regulation of specific aspects of space activities shall be the priority of space legislation. Such specific regulations may touch on such issues as investment and financing, insurance and indemnification system, commercial operation and management, and international cooperation. Once the regulations prove to be efficient and practicable, a comprehensive law on outer space may be drafted and adopted. The ultimate goal for China is to have a national space law, complemented by a set of administrative laws/regulations and departmental rules.

²⁹ *Id.* at art. 2.

³⁰ *Id.* at art. 10.

³¹ *Id.* at arts. 15-22.

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On October 18, 2007, the COSTIND released “the 11th Five-Year Program for National Space Development”. This first overall aerospace blueprint plans nine major missions from 2006 to 2010.³² One paragraph was devoted to the development of space law in China. The Regulation on the Administration of Space Activities is one of the laws to be published in the next five years. This Five-Year Plan also provides that China will start its work on National Space Law (with no settled time schedule). China will enact detailed policies on space industry, which include the policy of providing incentives in using domestic space products (including domestic satellites, remote sensing data and rockets), and the policy of space commercialization and privatization. In the next five years, China will also improve the current price system for space products and make rules on the administration of scientific research and production in outer space, and the administration of import and export of space technology.

Currently, the Regulation on the Liability for Damage in Launching Space Objects has been submitted for approval by the State Council. This draft legislation intends to implement the 1972 Liability Convention. The efforts above have sufficiently demonstrated Chinese Government’s firm efforts in carrying out international obligations on space issues and commitment to achieving legal transparency in outer space.

The draft Regulation on the Administration of Space Activities has been circulated for discussion among scholars and scientific experts. It is at the moment soliciting views from various parties and departments, including the Central Military Commission, Ministry of National Defense. Several meetings will be organized to discuss this regulation, one meeting being scheduled by end of this December for discussion among legal scholars. The existing space laws and the above two draft regulations

³² *China’s Five Year Aerospace Blueprint Plan Includes Trips to the Moon, Navigation Satellites*, ALL HEADLINE NEWS, Oct. 19, 2007, <http://allheadlinenews.com/articles/7008886845> (last visited October 30, 2007). Highlights of the five year plan include a trip to the Moon, manned space flights, improvements of the Compass Navigation Satellite System, a new generation of carrier rockets and completion of a space industry structure from satellite production to promotion of satellite exports.

will pave the way for a general National Space Legislation for China in future.