

How Far is China from the European Code of Conduct for Outer Space Activities?

Written by Jinyuan Su

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JINYUAN SU, JUL 30 2012

The derogation of space environment, in particular the proliferation of orbital debris, is approaching such a severity that urgent actions are demanded from the international community to mitigate its further growth. The European Draft Code of Conduct for Outer Space Activities (the European CoC), which was first released by the European Union (EU) in 2008, is one of the responses to this challenge. After subsequent updating and revisions, the revised draft was released in 2010. The European CoC is used by the EU to engage with third countries that have an interest in outer space activities, with the aim of establishing a text that is acceptable to the greatest number of countries and of adopting the CoC at an ad-hoc diplomatic conference.

The formulation and promotion of the European CoC has made the EU one of the key players in the politics of outer space. The instrument has been endorsed by quite a few space-faring countries, including Australia, Canada and Japan. The United States, though it declined to sign the revised draft straightly, has decided to join with the EU and other nations to develop an International Code of Conduct for Outer Space Activities, as announced by Secretary of State Hillary Clinton on 17 January 2012.[1] In contrast, China, Russia, India and Brazil have reportedly distanced themselves from the European CoC primarily on the grounds that they were insufficiently consulted in the drafting process of the instrument.

The purpose of the European CoC is to enhance the security, safety and sustainability of all outer space activities.[2] It appears to be in line with China's consistent policy of using outer space for peaceful purposes and opposing weaponization or any arms race in outer space, developing and utilizing space resources in a prudent manner and taking effective measures to protect the space environment, and ensuring that its space activities benefit the whole of mankind.[3] It is also China's consistent policy that to negotiate and conclude an international legally-binding instrument is the best option to prevent the weaponization of outer space and a space arms race.[4] The European CoC, unlike international conventions, is not legally binding. Instead, adherence to it and measures contained therein is voluntary for subscribing States. However, China is also open to the initiatives of Transparency and Confidence-Building Measures (TCBMs) in outer space. As H.E. Mr Wang Qun, Ambassador for Disarmament Affairs of China, said at the general debate of the first committee of the 66th session of UNGA, TCBMs are not at odds at all "with efforts to prevent an arms race in outer space, and such TCBMs are useful supplement to the legal instrument on prevention of weaponization of and an arms race in outer space." [5] But to decide whether or not to subscribe to the CoC, China would naturally refer to its subject matters.

The European CoC is ambitious in terms of the scope of application. As noted in the Preamble, the European CoC could apply to all types of outer space activities. Its Section 1.2 further explicates that the Code is applicable to all outer space activities conducted by a Subscribing State or jointly with other State(s) or by non-governmental entities under the jurisdiction of a Subscribing State. Therefore, the European CoC is not merely an instrument of environmental protection, but also has an arms control element. Its limitation on military activities in outer space is twofold. Firstly, the measures of environmental protection contained in the Code, when applied to military space activities, could limit the right of conducting military activities in outer space indirectly. It is not easy to subject the military of States to the same level of environmental accountability as that are required of civil actors, as is the case in both international and domestic realm. That the military is made an exception is not a new story in environmental

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protection conventions; Article 236 of the United Nations Convention on the Law of the Sea states that the environmental provisions of the Convention do not apply to military vessels. It is even more difficult to subject States at different technological level to subject their military to the same environmental standard. This could be easily regarded by new space-faring countries as malicious and discriminatory acts aiming to limit their military growth.

Secondly, the European CoC also addresses military activities in outer space directly. According to its Section 4.2, the Subscribing States commit in conducting outer space activities to refrain from any action which intends to bring about, directly or indirectly, damage, or destruction, of outer space objects unless such action is conducted to reduce the creation of outer space debris and/or is justified by the inherent right of individual or collective self-defense in accordance with the United Nations Charter or imperative safety considerations. This measure aims to protect outer space objects, either those of one's own or others', from damage or destruction, be it originating from outer space or the Earth. Therefore, it constrains at least testing and use of space-based and ground-based Anti-Satellites Weapons (ASATs). In contrast, the same CoC says very little about space-based weapons that are targeted at objects on Earth.

As one of its basic policies, China always stands against the weaponization of or an arms race in outer space.[6] In February 2008, China and Russia submitted 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) at the Conference on Disarmament (CD). As proposed in the draft treaty, States Parties undertake not to place in orbit around the Earth any objects carrying any kind of weapons, not to install such weapons on celestial bodies, and not to station such weapons in outer space in any other manner; not to resort to the threat or use of force against outer space objects; not to assist or encourage other states, groups of states or international organizations to participate in activities prohibited by the Treaty.[7] The provision only explicitly prohibits deployment of space-based weapons (space-to-space or space-to-Earth) and threat or use of ground-based ASATs.

The disparate substantive obligations between the European CoC and the PPWT reflect the different gravity of security concern of proposing States. From the security point of view, both approaches await perfection. The failure to ban ground-based ASATs and the lack of a verification regime in the PPWT has drawn criticisms. Likewise, the failure to constrain space-to-Earth weapons would make the European CoC hardly acceptable to China, and probably other States as well. The international community should negotiate a more balanced instrument which addresses different parties' concern in an equal manner. China has expressed that it is willing to work jointly with all sides to improve the PPWT by embracing and incorporating useful elements.[8] In fact, both China and Russia have recognized a separate provision banning ASATs as a possible additional element of the PPWT.[9]

Therefore, the primary hurdle for China to subscribe to the European CoC is the biased substantive obligations. To quote H. E. Mr. Wang Qun, China hopes that EU could deal with the concerns of all the relevant parties in an appropriate way, so as to conclude a Code of Conduct accepted to all.[10] Perhaps another hurdle is the forum to negotiate the CoC. China is more inclined to negotiate the issue within the framework of United Nations. The Geneva-based Conference on Disarmament (CD), which is specialized in military questions, is the most appropriate forum for China.

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[1] International Code of Conduct for Outer Space Activities, Press Statement, Hillary Rodham Clinton, Secretary of State, Washington, DC, January 17 2012, available at <<http://www.state.gov/secretary/rm/2012/01/180969.htm>>.

[2] Revised Draft Code of Conduct for Outer Space Activities, Section 1.1.

[3] China's Space Activities in 2011, available at <http://www.chinadaily.com.cn/cndy/2011-12/30/content_14354558.htm>.

[4] China's Position on Prevention of an Arms Race in Outer Space, available at <<http://www.fmprc.gov.cn/eng/wjb/zzjg/jks/kjlc/wkdd/t410757.htm>>.

[5] Statement by H. E. Mr. Wang Qun, Ambassador for Disarmament Affairs of China, at the general debate of the first committee of the 66th session of UNGA, available at <<http://www.fmprc.gov.cn/eng/wjb/zzjg/jks/jkxw/t865572.htm>>.

[6] China's Position on Prevention of an Arms Race in Outer Space.

[7] 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), Article II.

[8] China's Position on Prevention of an Arms Race in Outer Space.

[9] Compilation of Comments and Suggestions to the CD Working Paper on PAROS (1679), CD/1818, p.23, para.158.

[10] Statement by H. E. Mr. Wang Qun.

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