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# Conference on Disarmament

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**Letter dated 11 September 2015 from the Permanent Representative of China to the Conference on Disarmament and the Charge d'affaires a.i. of the Russian Federation addressed to the Secretary-General of the Conference transmitting the comments by China and the Russian Federation regarding the United States of America analysis of the 2014 updated Russian and Chinese texts of the draft treaty on prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects (PPWT)**

We have the honour to transmit herewith the Chinese and Russian texts of the document entitled "Comments by the Russian Federation and the People's Republic of China on the updated draft 'Treaty on the prevention of the placement of weapons in Outer Space, the threat or use of force against outer space objects' (CD/1985) with respect to the United States 'Analyses of the 2014 Russian-Chinese draft treaty on the prevention of the placement of weapons in Outer Space, the threat or use of force against Outer Space objects' (CD/1998)".

We would be grateful if you issue and circulate the letter and the annexed texts as an official document of the Conference on Disarmament.

(Signed) **Fu Cong**  
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of China to the Conference on Disarmament

(Signed) **Rinat Alyautdinov**  
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## **Follow-up comments by the Russian Federation and China on the analysis submitted by the United States of America of the updated Russian-Chinese draft PPWT**

1. The Russian Federation and the People's Republic of China express their appreciation for the active involvement of the United States of America in the discussion of the updated Russian-Chinese 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) and, in particular, the comments and proposals contained in document CD/1998, issued on 2 September 2014 at the Conference on Disarmament (CD).

2. We would like to point out the following in connection with the questions raised by the United States of America about the draft PPWT.

### **I. Scope**

3. The draft PPWT was not intended to be an instrument aimed at prohibiting a specific type of weapon capable of striking space objects and ground, sea or air targets alike. The Russian Federation and the People's Republic of China consider that issues of arms control in outer space should be addressed gradually. The draft PPWT focuses on banning the placement of weapons in outer space and the use of force against space objects. This is currently the most effective and feasible way of preventing armed conflict in outer space.

4. The purpose of the future PPWT may seem to some to be rather "broad" and to others, on the contrary, rather "narrow", but in any case it is very specific: a ban on the placement of weapons of any kind in outer space and on the use of force or threat of the use of force against outer space objects.

5. The Russian-Chinese draft PPWT is fully in keeping with the fundamental law on 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 of 27 January 1967 (1967 Outer Space Treaty) — which provides for the prohibition of the placement of weapons of mass destruction in outer space (art. IV) but does not address the issue of imposing a complete ban on these types of weapons. PPWT is preventive in nature. It aims at prohibiting certain actions and not weapons per se.

6. The Russian Federation and the People's Republic of China maintain that the prohibition against the possession, testing, production and stockpiling of space-based weapons does not contradict the purposes of PPWT. Furthermore, one of the principles that guided us in defining the scope of the treaty consisted in setting limitations that could be monitored. (Such monitoring capability is dealt with, for example, in document CD/1785 submitted by Canada in 2006.) Effective monitoring of "research, development, production, and terrestrial storage of space-based weapons" — on which there is no prohibition, as is pointed out in the United States document — is not feasible in practical terms for objective reasons.

7. The United States believes that such an approach leaves open the possibility that a party "could build and have in its inventory a readily deployable space-based ASAT or BMD capability". We are convinced that our proposed ban on the placement or use of weapons in outer space and on the use of capabilities for the purpose of inflicting damage on an outer space object of other States would make the very costly development and production of such weapons pointless. In addition, under such

circumstances, any effort to test ground-based, sea-based or air-based weapons against space objects would make no sense. Of course, under a ban on the deployment of weapons and the resulting absence of them in outer space, there would be no grounds that would justify space-based weapons testing.

8. We clearly cannot agree with the assertion by the United States of America that “Article 2 (4) of the United Nations Charter already prohibits the use of force or the threat of force against another State’s outer space objects”. It is true that Article 2, paragraph 4, of the Charter of the United Nations deals in particular with the obligation to refrain from the threat or use of force “in any other manner inconsistent with the purposes of the United Nations” (i.e. the threat or use of force not related to the infringement of the “territorial integrity or political independence of any State”). However, further criteria must be established, in our view, if this abstract statement is to lend itself to an interpretation which can be agreed upon and form the basis for characterizing a given action as the threat or use of force. Such a level of detail is particularly appropriate when it comes to outer space, where the space system may be affected in a variety of ways given the development of special malware.

9. It is in this spirit that the Russian Federation took up the issue of reaching a common understanding of the right to self-defence under the Charter as regards outer space in the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS).

10. Furthermore, it is worth noting that the Charter was drafted before the space age had begun and, consequently, in our view, the unqualified and direct application of the provisions of the Charter to such a sensitive area of international relations as outer space development requires further elaboration and clarification through negotiation between States.

11. The many attempts to address these questions during the drafting of international agreements (such as article 3, paragraph 2, of the Agreement Governing the Activities of States on the Moon and other Celestial Bodies of 1979) point to the need for clarification of the issue of the use of force in outer space on the grounds provided for under the Charter.

12. The extent to which an action is “intended” to inflict damage on a space object is put forward as one of the criteria for establishing the “use of force” or “threat of force” under the draft PPWT. Otherwise, almost any action that inflicted damage on a space object would be considered as a violation of PPWT and would give the State affected grounds to take countermeasures without interference. Such a criterion is particularly important in the light of the fact that some national doctrines have a discernible conceptual framework for immediate countermeasures and even preventive action in the event of any provocation or even alleged hostile activities by other States, which in itself is contrary to international law (for example, according to United States *Joint Publication 3-14: Space Operations*, preventing an adversary’s access to space capabilities “can include diplomatic, informational, military, and economic measures”; in paragraph 4 c. (4) of the Department of Defense directive on space policy, No. 3100.10 of 18 October 2012, (space directive) it is stated that “in order to deter attacks on U.S. or allied space systems, DoD will: Possess capabilities, not limited to space, to respond to an attack on U.S. or allied space systems in an asymmetric manner by using any or all elements of national power”).

13. We would also like to point out that, in paragraph 11 of CD/1998, the United States of America acknowledges that the use of force or threat of force is “not explicitly defined under existing international law”. That said, in paragraph 12, by referring nevertheless to international law, the United States of America rejects “intention” as a criterion for defining the notion of “use of force” or “threat of force”.

However, from a legal point of view, the term “threat” means the expression by any means of the “intention” to cause any harm. Moreover, in paragraph 4 b. of the space directive of 2012, purposeful interference with space systems is considered to be an infringement of United States rights.

14. The Russian Federation and China believe that an incoherent or overly broad interpretation of elements of international law, including the provisions of the Charter, applied to such a sensitive area as outer space is unacceptable. We are therefore convinced that clarification of the existing rules of international law concerning outer space, in particular the notion of “use of force” or “threat of force”, is a key aspect of ensuring security in outer space. Our draft of a legally binding PPWT could make a particularly significant contribution to resolving this problem.

15. As regards the ban under the draft PPWT on the use of force or threat of force against States parties to the treaty, it should be noted that we view a legally binding PPWT as an important element of international law which is meant only to fill gaps and clarify extremely sensitive provisions that are open to more than one interpretation. In no way does it contradict those provisions, however. This is backed up by the reference to existing international law in article III of the draft.

16. The same applies to the use of force and sanctions of the Security Council of the United Nations. Reference is made in article IV of the draft PPWT to Article 51 of the Charter which provides for the right of States to self-defence. We regard this article in particular as a reference to the entire Chapter VII of the Charter, which is precisely what is dealt with in the United States document.

17. We thank the United States of America for the question — which we had anticipated — regarding the fact that actions that cause temporary or reversible effects are no longer included in the updated draft. The amendment was made by us in order to make the text easier to grasp and in the light of the firm belief by the majority of States interested in PPWT that such a level of detail for the purpose of this treaty would be unnecessary. Furthermore, we do not question the notion that the “use of force” or “threat of force” in the context of this draft covers, among other things, temporary or reversible effects on the normal functioning of space objects, however only those that are caused by intentional actions carried out in order to achieve such results.

18. In the absence of arrangements on how to treat various situations involving the infliction of damage to the spacecraft of a State as a result of the space activities of another State, there is a need to continue the established practice of permitting such situations while not allowing for a unilateral assessment of them, especially one that is liable to lead to an unjustified armed response.

## **II. Verification**

19. The updated draft PPWT, like the first version of 2008, does not include a ready legally binding verification mechanism.

20. We drew on past experience with establishing and implementing international space law. The ban on the placement of weapons of any kind in space proposed in PPWT is similar to the provision of the Outer Space Treaty of 1967, which establishes a ban on placing in orbit around the Earth or stationing in outer space in any other manner nuclear weapons and all other weapons of mass destruction. The Outer Space Treaty does not provide for any mechanism for verifying the fulfilment of this obligation and during the half a century that it has been in force no questions about verification have been raised.

21. Another example of an instrument without a verification mechanism is the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction (BTWC) of 1972. BTWC was originally meant to include provisions on verification. However, owing to the complexity of verification mechanisms, the Convention itself was adopted first. In considering the issue of verification with respect to PPWT, we also had in mind such an option. We note that the United States of America stated it “could not support an approach in which verification provisions were determined only through subsequent negotiations of an additional protocol”, although it took part in negotiations over a verification protocol to BTWC. Moreover, it is the United States of America which continues to consider that measures taken at the national level on the implementation of BTWC are sufficient to ensure the prohibition regime established by the Convention.

22. We would also like to draw attention to the important provisions in the updated version of PPWT that have a direct bearing on verification. For example, article VII provides for a mechanism for consultations, which may be used if a breach of the treaty is suspected. Certain measures of verification may be carried out in a preventive manner through a system of data exchange between States and analysis of the situation in outer space. In order to ensure transparency in ongoing activities, States parties to PPWT could make a yearly statement about their outer space policy and strategy and take appropriate confidence-building measures for that purpose.

23. However, we continue to believe that the development of a verification mechanism would be desirable for the subsequent full implementation of PPWT. Therefore, article V of the updated draft provides for the possibility of drafting an appropriate additional protocol.

24. The United States of America considers that such an approach would not allow for the establishment of an “effective” verification regime for the implementation of the treaty. We believe that it is precisely following the entry into force of the PPWT, on the basis of the experience gained in implementing it, that joint efforts could be made to begin to develop a truly effective verification mechanism. An interim measure might be mutually agreed transparency and confidence-building measures (TCBMs). Moreover, we would like to stress we have never regarded TCBMs as an alternative to a possible verification mechanism within the framework of PPWT. We fully agree with the position of the United States of America that TCBMs “can complement, but not substitute for, an effective legally binding verification regime”.

25. Individual TCBMs, once tested in practice at the international level, could be an integral part of the verification mechanism of the treaty. Moreover, the reverse effect must also be taken into consideration: the achievement of some intrusive TCBMs is possible only under legally binding agreements. The establishment of a verification mechanism can thus help to expand the range of confidence-building measures for outer space activities carried out by States.

26. The Russian Federation and China trust that the United States of America, as a leading spacefaring nation, will be actively involved in international efforts to develop a verification mechanism and agreed TCBMs.

27. We also believe that, pending a verification mechanism, the fulfilment of obligations under PPWT will be guaranteed, a principle that for half a century has ensured the effectiveness of the 1967 Outer Space Treaty, namely: the perceived benefit from violating or withdrawing from the prohibition regime established under a treaty, as well as the adverse political consequences of such actions, would be outweighed by the dividends from fully complying with such a regime. If the United States of America calls into question the effectiveness of this principle regarding

PPWT, then it is calling into question, albeit implicitly, the very credibility of the Outer Space Treaty of 1967. Such a position by the United States of America would be counterproductive.

28. As regards the issue of verification of compliance with obligations, the working paper entitled "Verification aspects of PAROS" (CD/1781), submitted by the Russian Federation and the People's Republic of China in 2006 at the Conference on Disarmament, provides an analysis of the political technical and financial difficulties involved in verification. The most important task now is to reach consensus on a legal obligation and a legally binding instrument with respect to the prevention of the weaponization of space and an arms race in outer space. It would be useful at this moment to put aside the question of verification and other points of contention in order to reach consensus as soon as possible. The possibility of adding a verification protocol to the proposed draft treaty could be considered at a later date.

### **III. Terrestrially-based anti-satellite weapons**

29. We have taken into account the concerns of the United States of America about the lack of a ban on terrestrially-based anti-satellite weapons in the updated draft PPWT and the previous versions.

30. It is true that neither terrestrially-based nor, for that matter, sea- or air-based anti-satellite weapons are directly prohibited under the draft PPWT. As we have explained in document CD/1872, while anti-satellite weapons as a class of weapons are not prohibited under the draft PPWT, the proliferation of such weapons is restricted through a comprehensive ban on the placement in outer space of weapons of any kind, including anti-satellite weapons. A ban on ground-based anti-satellite (ASAT) weapon systems has been introduced into PPWT through the ban on the use of force, regardless of its source, against space objects. The draft treaty is thus effective in addressing the ASAT issue. Moreover, a State that conducts repeated testing of its missile defences will also be using the same technology that applies to anti-satellite weapons.

31. Furthermore, we would like to emphasize that in acceding to PPWT, under which the placement of weapons of any kind in outer space and the use or threat of force are prohibited, all spacefaring nations would have virtually no grounds for developing or using anti-satellite capabilities against objects of other countries. It would be pointless to spend significant resources on the development of anti-satellite weapons and therefore there would be no incentive to possess such weapons. All the concerns of the United States of America on this matter could be dispelled as a result of its active involvement in the elaboration and implementation of the draft PPWT.

32. In general, the Russian Federation and the People's Republic of China take a positive view of the involvement of the United States of America in the discussion of the contents of the updated draft PPWT. We believe that any arrangements in the field of arms control entail very sensitive mutual compromises on the part of all States parties.

33. In this regard, we call upon the United States of America and its allies to take a constructive approach, join the efforts of the international community on PAROS and begin collaboration with other relevant States on the draft of PPWT in the common interest of ensuring the safety of space activities and strengthening international security as a whole.

34. We are disappointed that, instead of constructive proposals on the contents of the draft PPWT, we once again see the appalling attempts of the United States of America to impose on the international community its politicized assessment of the space

programmes of certain States. We believe that such an approach on the part of a State that is avoiding having to shoulder any additional international legal obligations as far as outer space is concerned, including in order to ensure that outer space remains free of weapons of any kind, in no way facilitates progress towards a mutually acceptable resolution of issues involving the security of space activities.

35. That said, the lack of comments by the United States of America directly relating to the text confirms our belief that the updated draft treaty presented on 10 June 2014 at the Conference is a good starting point for full-scale negotiations.

36. We trust that the United States of America will take a conscientious approach to further international work on such an important topic as the prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects.

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