

Chinese Practice in Public International Law: 2012^{*}

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Abstract

This Survey covers materials reflecting Chinese practice in 2012 relating to: I. Fundamental principles of international law; II. Rule of law at the national and international levels; III. Sources of international law (provisional application of treaties; formation and evidence of customary international law); IV. Recognition of new States and governments (Palestine; Kosovo; the new Libyan government); V. Jurisdiction and immunity (Supreme People's Court's interpretation of the Second Amendment to the 1979 Criminal Procedural Code; Case concerning the 5 October Massacre in Mekong River committed by Sai Naw Kham, Hsang Kham, Yi Lai, Zha Xika, Zha Bo and Zha Tuobo); VI. China's territorial integrity (Taiwan; Tibet; China–India agreement on the establishment of a working mechanism for consultation and coordination on India–China border affairs; Diaoyu Island and its affiliated islands; Huangyan Island; Xisha Islands; Nansha Islands; Establishment of Sansha Municipality); VII. Polar regions (Arctic Council); VIII. International Law of the Sea (Baselines of the territorial sea adjacent to Diaoyu Dao and its affiliated islands; Selection, definition and protection of the Protection Scope of Territorial Sea Base Points; Submission to the Commission on the Limits of the Continental Shelf in part of the East China Sea; Revised Regulations on Administration of Coastal Border Security of Hainan Province; Suyan Rock; Okinotori Reef; Marine environment; Marine biodiversity beyond

* Note by the Editors: This survey is provided for information only. Readers are advised to consult the official documents themselves in their research. In international dealings, the Chinese government normally uses Chinese. The English quotations in this Survey are therefore normally translations, but they are taken from official web sites or another official source, unless otherwise noted. The abbreviations used in the quotations are from those official websites. Throughout this survey, “FM” stands for “Foreign Ministry”; “UN”, “United Nations”; “UNGA”, “United Nations General Assembly”; and “UNSC”, “United Nations Security Council”.

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areas of national jurisdiction; Sustainable fisheries; Commission on the Limits of the Continental Shelf; International Seabed Authority; International Tribunal for the Law of the Sea; Fight against piracy); IX. International law on outer space (Military use of and arms race in outer space; Space debris; International co-operation in peaceful uses of outer space); X. Aliens (Act on Administration of Exit and Entry; 72-hour visa-free travel to Beijing and Shanghai; Draft articles on expulsion of aliens; Refugees); XI. International human rights law (Human rights and the principle of non-interference of internal affairs; Human rights, politicization and double Standards; Human rights and national conditions; Right to survival and right to development; Human security; Discrimination and racism; Right to self-determination; Rights of indigenous peoples; Initial report under the Convention on the Rights of Persons with Disabilities; The Second Amendment to the 1979 Criminal Procedural Code; Act on Administration of Exit and Entry; Work of UN Secretariat in human rights; Office of the High Commissioner for Human Rights; Human Rights Treaty bodies and their reform); XII. International humanitarian law (protection of civilians in armed conflicts; Fourth Annual Session of Chinese National Committee of International Humanitarian Law; Litigation of Chinese victims against Japan before a court in Chongqing; Legal advisers in Chinese armed forces); XIII. International law on disasters (Strengthening of the co-ordination of humanitarian and disaster relief assistance of the UN, including special economic assistance); XIV. International law on arms control, disarmament and non-proliferation (Nuclear disarmament; Mongolia's nuclear-weapons-free status; Chemical Weapons Convention; Biological Weapons Convention; Amended Protocol II to the Convention on Conventional Weapons (CCW); Ottawa Convention; Anti-vehicle landmines; International humanitarian de-mining assistance; Protocol V to the CCW (ERW); China–Laos Memorandum of Understanding on the Provision of Assistance of China to the Laotian Victims of Cluster Munitions; Arms Trade Treaty; Cyber weapons; Conference on Disarmament); XV. International Criminal Law (International Criminal Court; ICTY and ICTR; Scope and application of universal jurisdiction; UN Comprehensive Convention against Terrorism; UN Convention against Transnational Organized Crime; UN Convention against Corruption; Cyber crime; Trafficking in cultural property); XVI. International environmental law (Joint Declaration of the Moscow Meeting on Inclusion of International Civil Aviation in the EU-ETS; Directive on Prohibition from Participating in EU Carbon Emission System; Protection of atmosphere; Effects of atomic radiation; Use of water resources of cross-border rivers); XVII. Law on diplomatic and consular relations (Vienna Convention on Diplomatic Relations; The *CHEN Guangcheng* incident; The *WANG Lijun* case); XVIII. International law on international organizations (The reform of the UNSC; Sanctions imposed by the UNSC; The working methods of the UNSC; UN Peacekeeping operations; Regulation on Participation of People's Liberation Army in UN Peacekeeping Operations (Provisional Application); Inter-mission co-operation of UN peacekeeping operations; Scale of assessments for the apportionment of the expenses of the UN); XIX. International law on settlement of disputes (International Court of Justice; Unilateral sanctions imposed by a State against another State).

I. Fundamental principles of international law

1. On 27 September 2012, the Chinese Foreign Minister made a statement at the general debate of the 67th session of the United Nations General Assembly (UNGA). He said:

Mutual respect and equality are basic norms governing international relations. All countries, big or small, strong or weak, rich or poor, are equal members of the international community. Respect for each other's sovereignty, core interests and choice of social system and development path is a fundamental principle guiding state-to-state relations. We should vigorously promote greater democracy in international relations. The internal affairs of a country should be handled by itself, and issues involving the interests of various countries should be handled by them through consultation. We should remain true to multilateralism and uphold the purposes and principles of the Charter of the United Nations and the central role of the United Nations in international affairs. China endeavors to strengthen political mutual trust and address problems and differences with other countries through dialogue and exchanges. China does not interfere in the internal affairs of other countries or impose its will on others, and China does not allow outside forces to interfere in its internal affairs ...¹

2. On 4 October 2012, a Chinese representative made a statement on cyber issues. Regarding cyber sovereignty, he said:

Cyber sovereignty is the natural extension of state sovereignty into cyberspace and should be respected and upheld. The Geneva Declaration of Principles adopted at the World Summit on the Information Society in 2003 clearly stated that "policy authority for internet-related public policy issues is the sovereign right of states". Every country is entitled to formulate its policies and laws in light of its history, traditions, culture, language and customs, and manage the internet accordingly.²

II. Rule of law at the national and international levels

3. On 11 October 2012, a Chinese representative made a statement at the Sixth Committee of the 67th Session of the UNGA on the rule of law at the national and international levels. She said:

- 1 Work Together to Achieve Common Security and Development, Permanent Mission of the People's Republic of China to the UN (28 September 2012) (<http://www.china-un.org/eng/hyyfy/t975343.htm>).
- 2 HUANG Huikang, Statement at Budapest Conference on Cyber Issues, Permanent Mission of the People's Republic of China to the UN (4 October 2012) (<http://www.chinesemission-vienna.at/eng/zgbd/t977627.htm>).

China believes that attention must be given to the following aspects in our current effort to strengthen international rule of law. Firstly, the purposes and principles of the UN Charter must be upheld, and universally recognized basic principles of international law, such as sovereign equality and non-interference in internal affairs, must be followed while addressing international relations and affairs. Secondly, international law must be applied in a uniform and consistent manner. Double standards or selective enforcement must be avoided and more importantly, it is impermissible to engage in practices of power politics and armed intervention under the disguise of international law. Thirdly, efforts are needed to continuously improve international legislation, especially in the non-traditional security area, and to preserve the UN's leading role in global governance and international legislative work. Fourthly, the balance between preserving peace and pursuing justice must be properly handled. As universal values, peace and justice should be mutually reinforcing and complementary. While supporting the punishment for serious international crimes, such as war crime, genocide, crime against humanity, it is necessary to ensure that justice is not pursued at the expense of peace or national reconciliation. With regard to strengthening national rule of law, China is of the view that there is no uniform model for rule of law applicable to all countries. Countries are entitled to choose the path to rule of law suitable to their own situations in light of their national conditions, political systems and judicial traditions, and they should play the leading role in building their national rule of law. At the same time, the international community should reinforce cooperation and following the basic principles of international law of respect for sovereign equality and non-interference in internal affairs, facilitate the voluntary and need-based mutual assistance among countries in terms of finance, technology and capacity building. China attaches great importance to international rule of law and puts it in actual practice. China strictly abides by the purposes and principles of the UN Charter, scrupulously follows the principles and rules of international law, and fulfills its international treaty obligations in earnest. In the 1950's, China joined India and Myanmar in advocating the five principles of peaceful co-existence. Those principles have now been accepted by most countries. With the evolvement of international situation, the Chinese Government has put forward the idea of building a harmonious world, which consists of the following: upholding democracy and equality as the basis for coordination and cooperation; striving for friendly relations and mutual trust as means to achieve common security; seeking equity and mutual benefit in pursuit of common development; and taking an inclusive and open approach to engage in inter-civilization dialogue. China, in accordance with its basic strategy of "implementing the rule of law and building a socialist country of rule of law", has actively explored for a path to rule of law suitable to its conditions. We have now essentially in place a socialist legal system with Chinese

characteristics. We have laws to go by in economic, political, cultural, social and other areas. Respect for and safeguarding of human rights have been incorporated in our Constitution, Criminal Procedure Law and other important legislations. The power of administrative authority has continuously been regulated. The supervision and accountability of government have been constantly strengthened. The judicial system reform has been ceaselessly advanced. And the social equity and justice have been further safeguarded. Strengthening rule of law is our common responsibility. To build and improve international and national rule of law is an onerous and time consuming task. The Chinese government firmly believes that sound rule of law is in line with the common aspirations of people of all countries for peace, development, and cooperation. China supports the GA in continuing the discussion under the item “Rule of Law at National and International Levels”. This will provide a platform for member states to share experiences, increase understanding, expand consensus, and enhance cooperation. China is ready, together with other countries, to make relentless efforts to safeguard and improve rule of law and promote the realization of the objective of rule of law.³

III. Sources of international law

III.A. Provisional application of treaties

4. On 2 November 2012, a Chinese representative made a statement on the Report of the International Law Commission on the work of its 63rd and 64th sessions at the 19th meeting of the Sixth Committee of the 67th Session of the UNGA. Regarding the topic of provisional application of treaties, the summary record shows her statement as follows:

51. Ms. Guo Xiaomei (China), welcoming the Commission’s progress on the various topics covered in the report on its sixty-fourth session (A/67/10), said that in selecting new topics, a matter of critical importance, the Commission must consider not only whether they were suitable for codification or progressive development but also whether the final product was urgently needed and likely to be widely accepted by the international community. Applying that standard, her delegation endorsed the Commission’s decision to pursue the topics “Formation and evidence of customary international law” and “Provisional application of treaties”.⁴

3 Statement by Ms. Guo Xiaomei Counsellor and Legal Adviser of the Chinese Mission to the United Nations At the Sixth Committee of the 67th Session of the UN General Assembly On The Rule of Law at the National and International Levels, Permanent Mission of the People’s Republic of China to the UN (11 October 2012) (<http://www.china-un.org/eng/hyyfy/t978368.htm>).

4 GA, 67th Session, 6th Committee, Summary record of the 19th meeting, Doc. No. A/C.6/67/SR.19, para.51.

III.B. Formation and evidence of customary international law

5. On 2 November 2012, a Chinese representative made a statement on the Report of the International Law Commission on the work of its 63rd and 64th sessions at the 19th meeting of the Sixth Committee of the 67th Session of the UNGA. Regarding the topic of formation and evidence of customary international law, the summary record shows her statement as follows:

51. Ms. Guo Xiaomei (China), welcoming the Commission's progress on the various topics covered in the report on its sixty-fourth session (A/67/10), said that in selecting new topics, a matter of critical importance, the Commission must consider not only whether they were suitable for codification or progressive development but also whether the final product was urgently needed and likely to be widely accepted by the international community. Applying that standard, her delegation endorsed the Commission's decision to pursue the topics "Formation and evidence of customary international law" and "Provisional application of treaties".⁵

IV. Recognition of new States and governments

IV.A. Palestine

6. On 5 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on Agenda Items 67(a)–(b) and 68: Elimination of Racism and Right of People to Self-determination. Regarding Palestine, she said:

China has consistently supported the just cause of Palestine in regaining its legitimate national rights and realizing its right to self-determination and to independent statehood. We support Palestine's membership in international organizations including the United Nations. We hope that the international community will have a stronger sense of responsibility and urgency regarding the Middle East Peace Process and work actively to facilitate negotiations in the interest of peace to resolve disputes through political talks, with a view to achieve lasting peace and stability in the Middle East at an early date ...⁶

IV.B. Kosovo

7. On 27 November 2012, a Chinese representative made a statement at the UN Security Council (UNSC) debate on Kosovo. He said:

5 Ibid.

6 Chinese Statement at the Third Committee of the 67th Session of the General Assembly on Agenda Item 67(a, b)& 68: the Elimination of Racism and Right of Peoples to Self-determination, Permanent Mission of the People's Republic of China (5 November 2012) (<http://www.china-un.org/eng/hyyfy/t985990.htm>).

China has always called for full respect for the sovereignty and territorial integrity of Serbia. The question of Kosovo must be dealt with within the framework of resolution 1244 (1999). It is up to the parties concerned to find an acceptable solution through dialogue and negotiations.⁷

IV.C. The new Libyan government

8. On 2 November 2012, an FM Spokesperson made a statement on the establishment of the new Libyan government. He said:

Libya's General National Congress recently voted through the make-up of the new government. China welcomes this development which represents a step forward in Libya's political transition process. As a friendly country to Libya, we wish Libya an early realization of lasting peace, stability, prosperity and development. We stand ready to work together with Libya for the continuous advancement of China-Libya friendly relations and cooperation.⁸

V. Jurisdiction and immunity

V.A. Supreme People's Court Interpretation of the Second Amendment to the 1979 Criminal Procedural Code

9. The Criminal Procedural Code of the People's Republic of China was adopted at the Second Session of the Fifth National People's Congress (NPC) on 1 July 1979. It was amended for the first time at the Fourth Session of the Eighth NPC on 17 March 1996. The Second Amendment was adopted at the Fifth Session of the Eleventh NPC on 14 March 2012 and came into force on 1 January 2013. It made a number of significant revisions to the 1996 Criminal Procedural Code, in particular evidence, cohesive measures, defense, examination, trial, execution etc. In order to correctly understand and apply the second amendment to the 1979 Criminal Procedural Code, the Supreme People's Court adopted this Interpretation on 5 November 2012. This Interpretation came into force on 1 January 2013, the 1998 Interpretation on the first amendment to the 1979 Criminal Procedural Code was abolished on the same day. Should any inconsistency between the previous interpretations of the Supreme People's Court and this Interpretation, the latter shall prevail (article 548). Articles 4–10 of this Interpretation provide the detailed rules on jurisdiction of the Chinese courts in foreign-related crimes. Article 4 provides that the jurisdiction over any crime committed in the

7 Statement by Ambassador Li Baodong at the Security Council Debate on Kosovo, Permanent Mission of the People's Republic of China to the UN (27 November 2012) (<http://www.china-un.org/eng/hyyfy/t993926.htm>).

8 Foreign Ministry Spokesperson Hong Lei's Remarks on the Establishment of the New Libyan Government, Ministry of Foreign Affairs of the People's Republic of China (2 November 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t985417.shtml>).

Chinese-registered ships outside the Chinese territory shall be exercised by the court of the Chinese port where the ship anchored for the first time after the crime. Article 5 provides that the jurisdiction over any crime committed in the Chinese-registered aircraft outside the Chinese territory shall be exercised by the court of the place where the aircraft landed for the first time after the crime. Article 6 provides that the jurisdiction over the crimes committed on international trains shall be determined according to agreements which were concluded by China and other relevant countries; in case that there is no such an agreement, the jurisdiction shall be exercised by the court of the place where the train arrives in China for the first time after the crime, or the court of the place which is the destination of the train. Article 7 provides that the jurisdiction over the crimes committed by Chinese citizens inside Chinese embassies or consulates abroad shall be exercised by the court of the place where his or her employer is located or the court of the place where his or her household is registered. Article 8 provides that the jurisdiction over any crime committed by Chinese citizens outside the Chinese territory shall be exercised by the court of the place where he or she enters China or the court of the place where he or she resided before leaving China; if the victim is also a Chinese citizen, jurisdiction may be also exercised by the court of the place where the victim resided before leaving China. Article 9 provides that jurisdiction over any crime committed by an alien against the Chinese State or a Chinese citizen outside the Chinese territory shall be exercised by the court of the place where the alien enters China or resides in China, or the court of the place where the Chinese victim resided in China before leaving China, provided that the alien shall be punished according to the Chinese Criminal Code. Article 10 provides that jurisdiction over crimes stipulated in international treaties which were ratified or acceded to by China, within the scope of the obligations which have been accepted by China, shall be exercised by the court of the place where the defendant was captured.⁹

V.B. Case concerning the 5 October 2011 Massacre in Mekong River committed by Sai Naw Kham, Hsang Kham, Yi Lai, Zha Xika, Zha Bo and Zha Tuobo

10. On 6 November 2012, the Intermediate People's Court of Kunming, Capital of Yunan Province, convicted Sai Naw Kham, a Burmese national, Hsang Kham, a Thai national and Yi Lai, a stateless person residing in Thailand, of crimes of intentional killing, transportation of drugs, kidnapping and hijacking of vessels, and sentenced them to death; convicted Zha Xika, a Laotian national, of the crimes of intentional

9 The Interpretation of the Supreme People's Court on the Application of the Criminal Procedural Code of the People's Republic of China (Zuigao Renmin Fayuan Guanyu Zhonghua Renmin Gongheguo Xingshi Susongfa de Jieshi) (20 December 2012) (http://www.court.gov.cn/qwfb/sfjs/201212/t20121228_181551.htm), summarized here by the authors.

killing, kidnapping and hijacking vessels, and sentenced him to death; convicted Zha Bo, a Burmese national, of the crimes of intentional killing, kidnapping and hijacking vessels, and sentenced him to the death penalty with two years' suspension; convicted Zha Tuobo, a Burmese national, of the crime of hijacking vessels, and sentenced him to imprisonment for eight years. The Court further ordered the six defendants to pay six million Chinese Yuan (approximately USD 970,000) to the Chinese victims. The Court found that from the end of September to the beginning of October 2011, the leaders of a criminal group, namely Naw Kham, Hsang Kham and Yi Lai, hijacked Chinese vessels and killed Chinese crew and then placed drugs on the Chinese vessels in order to frame the crew. On the morning of 5 October 2011, the members of this criminal group hijacked Yuxing No. 8, a vessel registered in Myanmar, and Huaping, a vessel registered in China, then tied up and controlled 13 crew members and placed 80,000 grams of prepared methamphetamine on the vessels, and forced the crew to sail to the designated ports on the Mekong River. Zha Xika, Zha Bo and Zha Tuobo participated in the armed hijacking of the vessels, Zha Xika and other defendants shot the crew members and then fled by taking a speedboat. According to the appointment, the Thai soldiers waiting on the banks shot the vessels, and then dropped the dead bodies of the Chinese crew members to the Mekong River. The Court further found that on 2 April 2011, under the direction of Naw Kham, Hsang Kham, Zha Xika and Zha Bo kidnapped the captain of Yuxi No. 3, a cargo vessel registered in China, and the captain of Jin Mumian No. 3, a passenger vessel registered in Laos, on the the Mekong River. They also hijacked three other Chinese cargo vessels the following day. During the period of detention, the two Chinese captains were tied up and beaten and forced to pay ransom. On 6 April 2011, Yi Lai set them free after having received 25 million Thai Baht. The Court determined that this criminal group, led by Naw Kham, has been frequenting the Mekong River basin for a long time in order to transport drugs, kidnap and hijack vessels, seriously endangering State security of the surrounding areas and the navigational order of this basin. The Court further held that the methods of the crimes are extremely cruel and their consequences extremely grave, as they had claimed the lives of thirteen Chinese citizens, and that they shall be severely punished in accordance with Chinese criminal law.¹⁰ This judgment is apparently the first case in China to exercise criminal jurisdiction over crimes committed by foreign criminals against Chinese citizens outside the Chinese territory; it set many precedents in the Chinese criminal judicial practices on many issues, including obtaining evidence, protection of foreign police appearing in Chinese courts, simultaneous interpretations and translations in

10 The Higher People's Court tried the case of Naw Kham et al., (18 December 2012) (http://news.kunming.cn/yn-news/content/2012-12/18/content_3163352.htm). Unfortunately the full text of the judgment in Chinese was not available to the author at the time of writing.

Chinese courts.¹¹ After the delivery of the conviction and the sentences, the six defendants appealed to the Higher People's Court of Yunnan Province on the ground the sentences were too heavy. On 26 December 2012, the Higher People's Court of Yunnan Province upheld the conviction and sentences of the Intermediate People's Court of Kunming, and submitted the sentences of the death penalty of Sai Naw Kham, Hsang Kham, Yi Lai and Zha Xika to the Supreme People's Court for approval.¹²

VI. China's territorial integrity

VI.A. Taiwan

11. On 22 February 2012, an FM spokesperson made a statement regarding Taiwan's attempt to make official its relation with countries with which it has no diplomatic relation and to participate in inter-governmental organizations and UN agencies in the "capacity of a government". He said:

We do not object to non-governmental economic, trade and cultural exchanges between Taiwan and countries that have diplomatic relations with us, but we oppose any official interactions or the signing of official agreements between them or Taiwan's participation in international organizations that are limited to sovereign states only. The remarks by some people in Taiwan you mentioned are a violation of and challenge to the one-China principle universally recognized by the international community. It is wrong and very harmful. We hope and believe that relevant countries will continue to adhere to the one-China principle, prudently handle Taiwan-related issues and take concrete actions to support the peaceful development of cross-Straits relations.¹³

VI.B. Tibet

12. On 13 November 2012, an FM Spokesperson made a statement on Dalai's address to an audience of 140 Japanese parliamentarians in the Japanese Upper House. He said:

Tibet is an inalienable part of China. Under the cloak of religion, Dalai is a political exile who has long been engaged in activities aimed at splitting China on the international stage. We are firmly opposed to the provision of support by any country or any person to Dalai in any form for his anti-China separatist activities.¹⁴

11 The case of Naw Kham et al., Creates Many "First" from Investigation to Conviction in the History of Chinese Criminal Justice, (6 November 2012) (http://www.legaldaily.com.cn/index_article/content/2012-11/06/content_3964657_2.htm).

12 The Higher People's Court of Yunnan Province Dismissed the Appeal from Naw Kham, et al., (http://news.xinhuanet.com/legal/2012-12/26/c_114165298.htm), summarized by the authors.

13 <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t908252.shtml>.

14 <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t988806.shtml>.

VI.C. China–India agreement on the establishment of a working mechanism for consultation and co-ordination on India–China border affairs

13. On 17 January 2012, China and India concluded an agreement on the establishment of a working mechanism for consultation and co-ordination on China–India border affairs. The full text of the agreement is as follows:

Agreement between the Government of the People’s Republic of China and the Government of the Republic of India on the Establishment of a Working Mechanism for Consultation and Coordination on China–India Border Affairs

New Delhi, 17 January 2012

The Government of the People’s Republic of China and the Government of the Republic of India (hereinafter referred to as the “two sides”);

Firmly believing that respecting and abiding by the Line of Actual Control pending a resolution of the Boundary Question between the two countries as well as maintaining and strengthening peace and tranquillity in the China–India border areas is very significant for enhancing mutual trust and security between the two countries, for resolving the Boundary Question at an early date and for building the China–India Strategic and Cooperative Partnership for Peace and Prosperity;

Desiring to materialize the spirit of the Agreement between the Government of the People’s Republic of China and the Government of the Republic of India on the Maintenance of Peace and Tranquillity Along the Line of Actual Control in the China–India Border Areas signed on 7th September 1993, the Agreement between the Government of the People’s Republic of China and the Government of the Republic of India on Confidence Building Measures in the Military Field Along the Line of Actual Control in the China-India Border Areas signed on 29th November 1996 and the Protocol between the Government of the People’s Republic of China and the Government of the Republic of India on Modalities for the Implementation of Confidence Building Measures in the Military Field Along the Line of Actual Control in the China-India Border Areas signed on 11th April 2005;

Aiming for timely communication of information on the border situation, for appropriately handling border incidents, for earnestly undertaking other cooperation activities in the China–India border areas, have agreed as follows:

Article I

The two sides agree to establish a Working Mechanism for Consultation and Coordination on China-India Border Affairs (hereinafter referred to as “the

Working Mechanism”) to deal with important border affairs related to maintaining peace and tranquillity in the China-India border areas.

Article II

The Working Mechanism will be headed by a Director General level official from the Ministry of Foreign Affairs of the People’s Republic of China and a Joint Secretary level official from the Ministry of External Affairs of the Republic of India and will be composed of diplomatic and military officials of the two sides.

Article III

The Working Mechanism will study ways and means to conduct and strengthen exchanges and cooperation between military personnel and establishments of the two sides in the border areas.

Article IV

The Working Mechanism will explore the possibility of cooperation in the border areas that are agreed upon by the two sides.

Article V

The Working Mechanism will undertake other tasks that are mutually agreed upon by the two sides but will not discuss resolution of the Boundary Question or affect the Special Representatives Mechanism.

Article VI

The Working Mechanism will address issues and situations that may arise in the border areas that affect the maintenance of peace and tranquillity and will work actively towards maintaining the friendly atmosphere between the two countries.

Article VII

The Working Mechanism will hold consultations once or twice every year alternately in China and India. Emergency consultations, if required, may be convened after mutual agreement.

Article VIII

This Agreement shall come into force on the date of its signature. It may be revised, amended, or terminated with the consent of the two sides. Any revision or amendment, mutually agreed by the two sides, shall form an integral part of this Agreement. Signed in duplicate in Hindi, Chinese and English languages

at New Delhi, on 17th January 2012, all three versions being equally authentic. In case of divergence the English text shall prevail.¹⁵

VI.D. Diaoyu Island and its affiliated islands

14. In accordance with the Act on the Protection of Sea Islands [Haidao Baohu Fa], the State Oceanic Administration standardized the names of islands in the Chinese maritime area. With the approval of the State Council, the State Oceanic Administration and the Ministry of Civil Affairs jointly publicized the standardized names of the Diaoyu Island and part of its affiliated islands on 2 March 2012.¹⁶

15. On 25 September 2012, the State Council Information Office released a white paper on Diaoyu Island and its affiliated islands titled “Diaoyu Dao, An Inherent Territory of China”.¹⁷

VI.E. Huangyan Island

16. On 18 April 2012, an Chinese FM spokesperson made a statement concerning Huangyan Island, the dispute over which the Philippine Foreign Minister proposed to submit to the International Tribunal on the Law of the Sea. He said:

The Huangyan Island is China’s inherent territory and there is no such issue of taking the dispute to the International Tribunal on the Law of the Sea. China has ample jurisprudential evidence supporting its sovereign rights over the Island. China was the first to discover and name the Huangyan Island and also the first to include it into China’s territory and exercise sovereign jurisdiction over it. The waters surrounding the Huangyan Island has been a traditional fishing ground for Chinese fishermen. Since ancient times, Chinese fishermen have been fishing in waters surrounding the Island. China National Bureau of Statistics, China Earthquake Administration and State Oceanic Administration have carried out multiple

15 The Chinese version is available at: http://www.fmprc.gov.cn/mfa_chn/wjb_602314/zzjg_602420/bjhyshws_603700/bhfg_603706/t947958.shtml; the English version is available at: <http://www.mea.gov.in/bilateral-documents.htm?dtl/17963/IndiaChina+Agreement+on+the+Establishment+of+a+Working+Mechanism+for+Consultation+and+Coordination+on+IndiaChina+Border+Affairs>.

16 http://www.soa.gov.cn/xw/hyyw_90/201211/t20121109_561.html.

17 <http://www.scio.gov.cn/zfbps/ndhf/2012/201210/t1225271.htm>. See also statement of the Foreign Affairs Committee of the NPC voicing its strong indignation toward and condemnation of Japan’s “purchase” of the Diaoyu Islands and its affiliated islets, http://www.npc.gov.cn/englishnpc/news/2012-09/12/content_1736964.htm; China’s Foreign Ministry, *The Diaoyu Islands: The Owner and the Thief*, <http://www.fmprc.gov.cn/eng/topics/diaodao/t981211.shtml>; Remarks of Rebuke Against Japan’s Statement on Diaoyu Dao by Ambassador Li Baodong During the General Debate of the 67th Session of the UNGA on 16 October 2012, <http://www.china-un.org/eng/hyyfy/t976699.htm>.

scientific researches on the Huangyan Island and its adjacent waters. Prior to 1997, the Philippines had had no objection to the Chinese Government's exercise of sovereign administration, development and exploitation of the Huangyan Island, but instead, expressed on many occasions that the Island is outside the scope of Philippine territory. On the official Philippine maps published in 1981 and 1984, the Island is also marked outside Philippine territorial limits. The UN Convention on the Law of the Sea allows coastal states to claim a 200-nautical-mile exclusive economic zone, but coastal states have no rights to undermine other countries' inherent territorial sovereignty based on that. Any attempt to change the ownership of territorial sovereignty by using the UNCLOS is against international laws as well as the purpose and principle of the UNCLOS.¹⁸

VI.F. Xisha Islands

17. On 21 June 2012, an FM spokesperson made a statement on the so-called Vietnamese Law of the Sea which places China's Xisha and Nansha Islands under its so-called "sovereignty" and "jurisdiction". He said:

The Chinese Government hereby reaffirms: the Xisha and Nansha Islands are Chinese territory. China has indisputable sovereignty over the above islands and their adjacent waters. It is illegal and invalid for any country to lay territorial and sovereign claims to the Xisha and Nansha Islands or take any actions on that basis.¹⁹

VI.G. Nansha Islands

18. On 9 January 2012, an FM spokesperson made a statement on the legal status of Xianbin Reef (Sabina Reef). He said:

The Xianbin Reef is a part of China's Nansha Islands. China has indisputable sovereignty over the Nansha Islands and their adjacent waters.²⁰

18 Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on April 18, 2012, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t925289.shtml>. See also FM Spokesperson's rebuttal to Philippine Foreign Minister's statement concerning Huangyan Island: Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on April 24, 2012, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t926966.shtml>; Foreign Ministry Spokesperson Hong Lei's Remarks on Philippine President's Speaking of the Huangyan Island Incident in His State of the Nation Address (25 July 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t955707.shtml>).

19 Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on June 21, 2012 (22 June 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/t945296.htm>).

20 Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on January 9, 2012 (10 January 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t895104.shtml>).

19. On 21 July 2012, an FM spokesperson made a statement on the ASEAN foreign ministers' statement concerning the six-point principles on the South China Sea issue. He said:

The core of the South China Sea issue is disputes between relevant countries concerning the sovereignty over the Nansha Islands and demarcation of their adjacent waters. China has ample historical and legal basis for its sovereignty over the Nansha Islands and their adjacent waters.

China is ready to work with ASEAN countries to fully and effectively implement the Declaration on the Conduct of Parties in the South China Sea (DOC) in a bid to jointly uphold peace and stability in the South China Sea. China is open to discussions with ASEAN countries on working out a Code of Conduct in the South China Sea (COC). We hope all parties can abide strictly by the DOC so as to create necessary conditions and atmosphere for the discussion of the COC.

As a signatory to the UN Convention on the Law of the Sea (UNCLOS), China attaches great importance to upholding the principles and purposes of the UNCLOS. The Convention makes it clear right at the beginning that it aims at "establishing a legal order for the seas and oceans with due regard for sovereignty of all states". The Convention is not an international treaty to regulate disputes of territorial sovereignty between states, nor can it serve as the basis to arbitrate such disputes. Countries concerned should settle the demarcation disputes in the South China Sea on the basis of solving disputes of territorial sovereignty over the Nansha Islands, in accordance with historical facts and International Law including the UNCLOS ...²¹

VI.H. Establishment of Sansha Municipality

20. On 21 June 2012, the Ministry of Civil Affairs announced that with the approval of the State Council, the Agency on Xisha Islands, Nansha Islands and Zhongsha Islands under Hainan Province has been discontinued, and that a new Sansha Municipality has been established, with the jurisdiction over Xisha Islands, Zhongsha Islands, Nansha Islands, as well as their maritime areas. The announcement further stated that the People's Government of the new Sansha Municipality is stationed on the Yongxing Island of Xisha Islands.²² The spokesperson of the Ministry of Civil Affairs explained that:

21 <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t955114.shtml>.

22 The Announcement of the Ministry of Civil Affairs on the Approval of the Establishment of the Sansha Municipality by the State Council (Minzhengbu Guanyu Guowuyuan Pizhun Sheli Diji Sashashi de Gonggao) (21 June 2012) (<http://www.mca.gov.cn/article/zwgk/mzyw/201206/20120600325063.shtml>), summarized by the authors.

China is the first country to discover, name and exercise continuous sovereign jurisdiction over Xisha Islands, Zhongsha Islands, Nansha Islands and their maritime areas. After the establishment of the People's Republic of China, the Agency on Xisha Islands, Nansha Islands and Zhongsha Islands was established in 1959. This Agency was directly under the leadership of Hainan administrative region, and exercised jurisdiction over Xisha Islands, Zhongsha Islands, Nansha Islands and their maritime areas. In 1988, Hainan administrative region was abolished, and Hainan Province was established. This Agency was therefore under the jurisdiction of Hainan Province. The establishment of Sansha Municipality is the adjustment and refinement of China's administrative management regime on Xisha Islands, Zhongsha Islands, Nansha Islands and their maritime areas of Hainan Province.²³

VII. Polar regions

VII.A. Arctic Council

21. On 6 November 2012, a Chinese Ambassador made a statement at the Meeting between the Swedish Chairmanship of the Arctic Council and Observers. The main content of his statement is as follows:

[Arctic Council]

The Arctic Council is the most important regional inter-governmental forum to address issues of environmental protection and sustainable development in the Arctic. It plays a very important role in coordinating Arctic scientific research, strengthening Arctic environmental protection, and promoting Arctic economic and social development cooperation. What the Council has done under current framework of international law has facilitated the joint efforts by relevant parties to effectively tackle pressing regional and trans-regional issues in the Arctic. The research and discussions conducted by the Council on trans-regional issues such as climate change and Arctic shipping have had significant influence on the decision-making by relevant international organizations. I believe that the Council's institutional reform will further strengthen its important role in Arctic affairs and promote the communication and cooperation among stakeholders in addressing Arctic issues.

[Acceptance of Observers]

Accepting observers has been a long-standing issue of the Council. It is the hope of a number of non-Arctic states and organizations, including China, that the Council

23 Answers to the correspondents from the Spokesperson of the Ministry of Civil Affairs on the Establishment of the Sansha Municipality Approved by the State Council (Minzhengbu Xinwen Fayanren jiu Guowuyuan Pizhun Sheli Dijǐ Sanshashi Dajizhewen) (21 June 2012) (<http://www.mca.gov.cn/article/zwgk/mzyw/201206/20120600325075.shtml>), translated by the authors.

will resolve it appropriately at an early date. China is of the view that the participation of non-Arctic states in the Council as observers has positive significance to the work of the Council.

Most of the Arctic region is under the jurisdiction of Arctic states. While some of the Arctic issues are national in nature, some of them are regional that need to be addressed by Arctic states themselves in a coordinated manner, such as those relating to environmental protection, resources exploration, indigenous peoples and other social and economic issues. Arctic states have substantial interests in those issues. The participation of observers does not prejudice the dominant role of Arctic states in the Council. The participation of observers in the work of the Council is based on the recognition of Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic as well as their decision-making power in the Council.

At the same time, some of the Arctic issues are trans-regional, such as climate change and international shipping, which involve the interests of non-Arctic states. Arctic states and non-Arctic states share common interests in addressing trans-regional issues and should further their communication and cooperation.

By accepting observers and therefore enhancing its openness and inclusiveness, the Council will help the international community to better appreciate its work, thus expanding its international influence. Its exchanges and cooperation with the observers will help it review trans-regional issues from a broader perspective, which will facilitate effective settlement of relevant issues through international cooperation. This model of cooperation has been effective in addressing issues such as climate change and international shipping, and deserves further promotion. The Council should well respond to the desire expressed by relevant parties to participate in the work of the Council as observers.

[China's Application for Observer Status]

China is a near Arctic state. The natural changes and economic development in the Arctic have significant impact on China's climate, ecological environment, agricultural production as well as social and economic development. Most Arctic-related activities of China are scientific researches. China has made some progress in its studies on high-altitude physics, climate change, ecology and ocean in the Arctic. We are ready to conduct cooperation on scientific research with other states. China has always attached great importance to communication and dialogue with Arctic states on Arctic issues to enhance mutual understanding and trust.

Since 2007, China has participated, as ad-hoc observer, in relevant activities of the Council and thereby gained a better understanding of the Council's work. China appreciates the positive role played by the Council on Arctic Affairs, accepts and supports the objectives of the Council. In the end of last year, China submitted its updated application materials to the Council in accordance with the criteria and procedure for accepting observers. China is both willing and

able to contribute to the work of the Council and to strengthen cooperation with states in the Council for the peace, stability and sustainable development in the Arctic region ...²⁴

VIII. International Law of the Sea

VIII.A. Baselines of the territorial sea adjacent to Diaoyu Dao and its affiliated islands

22. On 10 September 2012, in accordance with the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone adopted and promulgated on 25 February 1992, the Government of the People's Republic of China hereby announces the baselines of the territorial sea adjacent to Diaoyu Dao and its affiliated islands of the People's Republic of China.²⁵

I. The baselines of the territorial sea adjacent to Diaoyu Dao, Huangwei Yu, Nanxiao Dao, Beixiao Dao, Nan Yu, Bei Yu and Fei Yu are composed of all the straight lines joining the adjacent base points listed below:

1.	Diaoyu Dao 1	25°44.1'N	123°27.5'E
2.	Diaoyu Dao 2	25°44.2'N	123°27.4'E
3.	Diaoyu Dao 3	25°44.4'N	123°27.4'E
4.	Diaoyu Dao 4	25°44.7'N	123°27.5'E
5.	Haitun Dao	25°55.8'N	123°40.7'E
6.	Xiahuya Dao	25°55.8'N	123°41.1'E
7.	Haixing Dao	25°55.6'N	123°41.3'E
8.	Huangwei Yu	25°55.4'N	123°41.4'E
9.	Haigui Dao	25°55.3'N	123°41.4'E
10.	Changlong Dao	25°43.2'N	123°33.4'E
11.	Nanxiao Dao	25°43.2'N	123°33.2'E
12.	Changyu Dao	25°44.0'N	123°27.6'E
1.	Diaoyu Dao 1	25°44.1'N	123°27.5'E

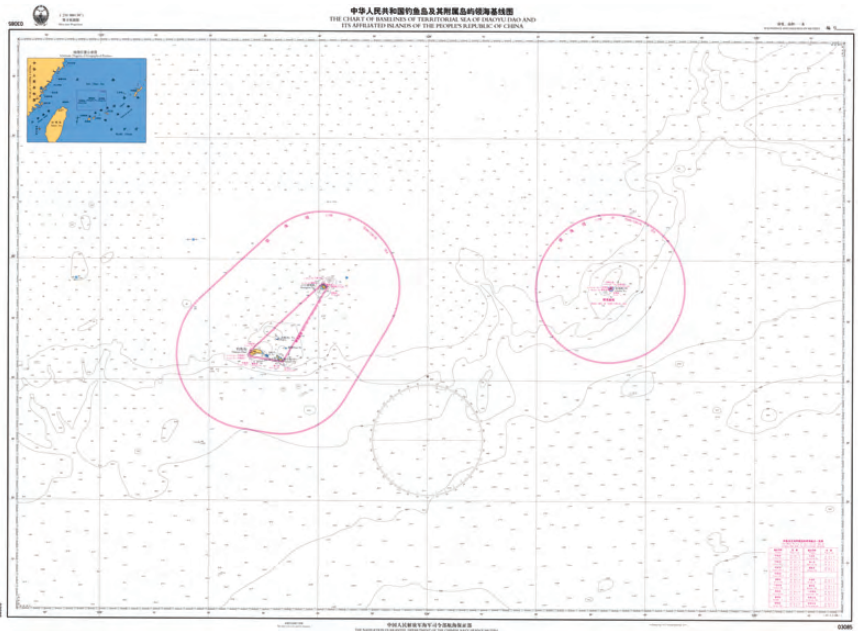
II. The baselines of the territorial sea adjacent to Chiwei Yu are composed of all the straight lines joining the adjacent base points listed below:

24 Observer and Ad-hoc Observer Meeting 2012, 6 November 2012 (<http://www.arctic-council.org/index.php/en/events/meetings-overview/observer-meeting-2012>).

25 Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and its Affiliated Islands (10 September 2012) (http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/chn_mzn89_2012_e.pdf).

1.	Chiwei Yu	25°55.3'N	124°33.7'E
2.	Wangchi Dao	25°55.2'N	124°33.2'E
3.	Xiaochiwei Dao	25°55.3'N	124°33.3'E
4.	Chibeibei Dao	25°55.5'N	124°33.5'E
5.	Chibeidong Dao	25°55.5'N	124°33.7'E
1.	Chiwei Yu	25°55.3'N	124°33.7'E

The Chart also showed as follows:²⁶



The copy of the above list of geographical coordinates as contained in the *Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and its Affiliated Islands* as well as the Chart was deposited with the Secretary-General of the UN on 13 September 2012 in accordance with Article 16 (2) of the UNCLOS.²⁷

26 Figure source: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/chn_mzn89_2012.jpg.

27 <http://www.fmprc.gov.cn/ce/ceun/chn/gdxw/t969758.htm>, see also http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

VIII.B. Selection, definition and protection of the Protection Scope of Territorial Sea Base Points

23. On 11 September 2012, the State Oceanic Administration promulgated the Measures on Selection and Protection of the Protection Scope of Territorial Sea Base Points (Linghai Jidian Baohu Fanwei Xuanhua yu Baohu Banfa). The Act on Protection of Islands requires that the State define the protection scope of territorial sea base points and provide special protection. The Measures were promulgated on the basis of this requirement. They provide that the State Oceanic Administration is responsible for supervising and directing the work of selection and protection of the protection scope of territorial sea base points, and that the detailed work of selection rests on the governments of provinces, autonomous regions and municipalities directly under the State Council where the base points are located.²⁸

24. In accordance with the Measures, on 3 December 2012, the State Oceanic Administration promulgated the Technical Program on Selection and Definition of Protection Scope of Territorial Sea Base Points (Provisional Application) (Linghai Jidian Baohu Fanwei Xuanhua Jishu Guicheng) (Shixing). This Program made detailed provisions on the principles of selection and definition of protection scope, the working programs, the collection of materials, the on-site survey and the writing of the selection and definition reports.²⁹

VIII.C. Submission to the Commission on the Limits of the Continental Shelf in part of the East China Sea

25. On 14 December 2012, China submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8 of the Convention, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured in part of the East China Sea. The executive summary of the Chinese submission states in paragraph 1:

The geomorphologic and geological features show that the continental shelf in the East China Sea (hereinafter referred to as “ECS”) is the natural prolongation of China’s land territory, and the Okinawa Trough is an important geomorphologic unit with prominent cut-off characteristics, which is the termination to

28 The State Oceanic Administration Promulgated the Measures on Selection and Protection of the Protection Scope of Territorial Sea Basepoints (Haiyangju Yinfa Linghai Jidian Baohu Fanwei Xuanhua yu Baohu Fanwei) (12 September 2012) (http://www.gov.cn/gzdt/2012-09/12/content_2222958.htm).

29 The State Oceanic Administration Promulgated the Technical Program on Selection and Definition of Territorial Sea Base Points (Provisional Application) (Haiyangju Yinfa Linghai Jidian Baohu Fanwei Xuanhua Jishu Guicheng (Shixing)), China Ocean Newspaper (3 December 2012) (http://www.soa.gov.cn/xw/hyyw_90/201212/t20121204_19338.html).

where the continental shelf of ECS extends. The continental shelf in ECS extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of China is measured.

26. In paragraph 5, titled “Natural Prolongation of Land Territory”, the summary states:

The shelf of ECS is of stable continental crust. At the Okinawa Trough, however, due to the upwelling of the upper mantle and the sharp thinning of the continental crust, the crust is transformed from thinned continental crust to transitional crust. Nascent oceanic crust occurs in the central rifted zone of the south part of the Okinawa Trough. The shelf of ECS, the slope of ECS and the Okinawa Trough form a passive continental margin. The Okinawa Trough is the natural termination of the continental shelf of ECS.

27. China then gives the line of the outer limits of its continental shelf by connecting ten selected points in the Okinawa Trough, and also informs the Commission of that China, the Republic of Korea and Japan are yet to complete the delimitation of the continental shelf in the area involved in the submission.³⁰

VIII.D. Revised Regulations on Administration of Coastal Border Security of Hainan Province

28. On 27 November 2012, the 35th Session of the Standing Committee of the Fourth Provincial People’s Congress of Hainan Province revised the Regulations on Administration of Coastal Border Security of Hainan Province (Hainan Sheng Yanhai Bianfang Zhi’an Guanli Tiaoli), which was adopted on 26 November 1999. The revised Regulations comes into force on 1 January 2013.

29. In accordance with the statement made by the Spokesperson of the Standing Committee of the People’s Congress of Hainan Province on 30 December 2012, the application scope of the Regulation was not revised. In accordance with the decision of the First Session of the Eighth National People’s Congress on the establishment of Hainan Province on 13 April 1988, Xisha Islands, Nansha Islands, Zhongsha Islands, and their maritime areas are under jurisdiction of Hainan Province. Article 31 of the Revised Regulations provides that foreign ships and personnel shall comply with Chinese laws and regulations if they enter into the maritime areas under the jurisdiction of Hainan Province and shall not commit any of the following acts in violation of administration of coastal border security: (1) illegal stopping or anchoring for the purpose of disturbing social order while passing the territorial sea areas under the jurisdiction of Hainan Province; (2) exiting or entering without

30 Submission by the People’s Republic of China concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea (http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/executive%20summary_EN.pdf).

examination or authorization, or changing the port of exit or entry without authorization; (3) landing illegally on any island or reef under the jurisdiction of Hainan Province; (4) destroying naval defense instalments or productivity or life installments on any island or reef under the jurisdiction of Hainan Province; (5) propaganda activities in violation of Chinese State sovereignty or endangering Chinese State security; (6) other activities in violation of regulation of administration coastal border security in laws or regulations.³¹

VIII.E. Suyan Rock

30. On 13 March 2012, an FM spokesperson expressed China's position of the issue of Suyan Rock. He said:

The Suyan Rock is situated in the waters where the exclusive economic zones of China and the Republic of Korea [ROK] overlap. The ownership of the rock should be determined through bilateral negotiation, pending which neither of the two should take unilateral moves in these waters. China and the ROK have a consensus on the Suyan Rock, that is, the rock does not have territorial status, and the two sides have no territorial disputes.³²

VIII.F. Okinotori Reef

31. On 16 May 2012, an FM Spokesperson made a statement on the UN Commission on the Limits of the Continental Shelf's result of handling the Okinotori Reef issue. He said:

According to information released by the UN Commission on the Limits of the Continental Shelf, the Commission has adopted the result of handling Japan's claim of outer continental shelf. Japan's claim of its outer continental shelf based on Okinotori Reef was not acknowledged by the Commission. It is completely baseless that Japan alleged that the Okinotori Reef had been recognized by the Commission as an "island".

Actually, only 310,000 square km out of the 740,000 square km-claim of Japan submitted to the Commission is recognized by the Commission. The unrecognized claim includes the around 250,000 square km southern Kyushu-Palau ridge based on the Okinotori Reef.

The Japanese side mentioned that the Shikoku basin to the north of the Okinotori Reef had been recognized by the Commission. However, the area, in fact, is based on other parts of Japan's land territory, completely irrelevant to the Okinotori Reef.

31 Regulations on Administration of Coastal Border Security of Hainan Province (Hainan Sheng Yanhai Bianfang Zhi'an Guanli Tiaoli) (31 December 2012) (<http://www.hinews.cn/news/system/2012/12/31/015302759.shtml>).

32 Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on March 12, 2012 (13 March 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/t913936.htm>).

After Japan submitted its claim to the Commission, China and the ROK have delivered multiple notes to the UN Secretary-General, stressing that in light of international law, the Okinotori Reef which cannot sustain human habitation shall have no exclusive economic zone or continental shelf and requesting the Commission not to recognize Japan's claim of outer continental shelf based on the Okinotori Reef. Many other countries have also voiced disagreements over Japan's illegitimate claim. The Commission's handling of Japan's claim including the Okinotori Reef issue is fair and reasonable, in compliance with international law, and has safeguarded the overall interest of the international community. China welcomes that decision.³³

VIII.G. Marine environment

32. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 "Oceans and the Law of the Sea". With regard to marine environment, he said:

China always attaches great importance to the question of greenhouse gas emissions from ships, and has taken note of the work carried out by the International Maritime Organization. The Chinese side believes that the key to addressing this question is to uphold the principle of "common but differentiated responsibilities" established by the United Nations Framework Convention on Climate Change. At the present stage, work in this area should focus on facilitating technological advancement in developing countries through technology transfer and capacity building with the view to improving the energy efficiency of ships.³⁴

VIII.H. Marine biodiversity beyond areas of national jurisdiction

33. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 "Oceans and the Law of the Sea". With regard to marine biodiversity beyond areas of national jurisdiction, he said:

The Chinese side supports the adoption by the GA of the concrete working recommendations by the Ad Hoc Open-ended Informal Working Group on marine biological diversity beyond areas of national jurisdiction. China is of the view that since the high seas and international seabed area involve the interest

33 Foreign Ministry Spokesperson Hong Lei's Remarks on the UN Commission on the Limits of the Continental Shelf's Result of Handling the Okinotori Reef Issue (16 May 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t933024.shtml>).

34 Statement by Ambassador Li Baodong at the 67th Session of the UN General Assembly on Agenda Item 75 Oceans and the Law of the Sea (11 December 2012) (<http://www.china-un.org/eng/hyyfy/t997388.htm>).

of the entire international community, the proper handling of issues relating to marine biodiversity in those areas is crucial for the maintenance of an equitable and rational international maritime order. The relevant work should therefore proceed in an incremental manner and fully accommodate the legitimate needs of all countries, especially developing countries, for marine biological resources. In addition, the Chinese side notes with satisfaction the establishment of the institutional framework of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, as well as the positive progress in various aspects of the Regular Process. Under the auspices of the United Nations, China hosted a workshop for the Eastern and South-Eastern Asian Seas in Sanya last February, contributing to regional capacity building in marine environment assessment. China attaches importance to the smooth progress of the Regular Process and look forward to the expected outcomes. We support enhancing DOALOS as the secretariat of the Regular Process.³⁵

VIII.I. Sustainable fisheries

34. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 “Oceans and the Law of the Sea”. With regard to sustainable fisheries, he said:

As a responsible fishing nation, China takes an active part in the work of various international fishery organizations, and commits itself to the strengthening of the conservation and management of fishery resources. China will continue to work with the countries concerned to promote the development and refinement of the international regime for fisheries management and regulate fishing activities in order to achieve sustainable use of marine biological resources, conserve marine ecological balance, and ensure the sharing of fishery benefits by all countries.³⁶

VIII.J. Commission on the Limits of the Continental Shelf

35. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 “Oceans and the Law of the Sea”. With regard to the work of the Commission on the Limits of the Continental Shelf (CLCS), he said:

China highly commends CLCS for its contribution to a balanced handling of the legitimate rights and interests of coastal States and the overall interests of the international community. We support the Commission in continuing to fulfill its mandate in accordance with the Convention and its own rules of procedure in

35 Ibid.

36 Ibid.

order to maintain the quality and professionalism of its consideration of submissions. We call on the international community to continue to assist the Commission to find an appropriate solution to the problems related to its workload and we congratulate the members on their election.³⁷

VIII.K. International Seabed Authority

36. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 “Oceans and the Law of the Sea”. With regard to the work of the International Seabed Authority (ISA), he said:

The Chinese side congratulates the ISA on its achievements over the past year, and congratulates Mr. Nii Allotey Odunton on his re-election as the Secretary-General of the Authority. The Chinese Government has all along strongly supported the work of the Authority and promoted the effective and full participation of developing countries in international seabed affairs. In July this year, China made another donation of \$20,000 to the Authority’s Voluntary Trust Fund to facilitate the attendance of members from developing countries to the meetings of the Legal and Technical Commission and the Finance Committee. Last month, a Chinese research institute and the Authority jointly convened an international workshop in Beijing on the implementation of Article 82 of the Convention. The Authority has begun formulating regulations on exploitation of resources in the Area. The Chinese side is of the view that the formulating work should be aligned with the advancement in technology and the industry and be carried out in a progressive manner. The regulations should reflect a proper balance between resource utilization and environmental protection, and between the interests of exploiters and those of the international community as a whole.³⁸

VIII. L. International Tribunal for the Law of the Sea

37. On 11 December 2012, a Chinese representative made a statement at the 67th Session of the UNGA on Agenda Item 75 “Oceans and the Law of the Sea”. With regard to the work of the International Tribunal for the Law of the Sea (ITLOS), he said:

The Chinese side has taken note of the increasing activities of ITLOS, both in terms of its caseload and the number of rulings. The increasing topical coverage of the cases and the Tribunal’s growing influence indicate that this judicial body has entered a new phase of comprehensively implementing its mandate under the Convention. The Tribunal is also playing an active role in helping with the capacity building of the developing countries, to which the Chinese side expresses its

37 Ibid.

38 Ibid.

appreciation. China values and supports the important role of the Tribunal in the peaceful settlement of maritime disputes, the maintenance of international maritime order, and the dissemination of the law of the sea. We will continue to support the Tribunal in its efforts to help enhancing capacity building for developing countries as well.³⁹

VIII.M. Fight against piracy

38. On 19 November 2012, a Chinese representative made a statement at the UNSC open debate on piracy. He made the following points on this issue:

First, it is important to strengthen international cooperation in our fight against piracy. Such international cooperation has achieved marked results, making piracy attacks less successful than they have been. We hope that the international community will continue to be guided by the United Nations Convention on the Law of the Sea and relevant international law and will persist in strengthening cooperation and coordination through coordinated actions designed to further combat piracy. In such activities the international community must fully respect the sovereignty and territorial integrity of the countries concerned. We support the continued role of the United Nations in coordination in that regard. It is important to enrich and improve cooperation mechanisms, strengthen information-sharing and effectively prosecute and try those involved in piracy so as to forge synergies in our fight against it. Secondly, it is important to strengthen the capacity-building of relevant countries and regional organizations in fighting piracy. We support the initiatives taken by the countries of the Gulf of Guinea, which include formulating national strategies, improving international legal regimes, strengthening good governance and enhancing naval, judicial and law enforcement capacities. All of those efforts will enable them to play a better role in preventing and fighting piracy. We commend the Economic Community of West African States, the Economic Community of Central African States and the Commission of the Gulf of Guinea for having developed a regional strategy for fighting piracy and on the establishment of a regional centre for coordination. We call upon the international community to be more responsive to the capacity building efforts of relevant countries and regional organizations by providing more financing and technical assistance. Thirdly, it is important to take a holistic approach and address both the symptoms and root causes of piracy. Piracy comes about as a result of deeply rooted economic and social factors. Although piracy takes place at sea, its genesis lies on land. The international community must take into account considerations of specific conditions of specific areas and address the problem at its source so as to eliminate the conditions upon which

39 Ibid.

piracy thrives. As far as Africa is concerned, poverty and economic and social underdevelopment are the root causes of piracy. We call on the international community to redouble its efforts to provide assistance to African countries and the least developed countries and to play a better, more active role in achieving stability, eliminating poverty and attaining sustainable economic and social development. China has actively participated in the international fight against piracy. Since January 2009, the Chinese navy has dispatched escort convoys to the Gulf of Aden and the coastal areas off Somalia. By early November this year, China had dispatched in total 13 escort formation convoys, totalling 34 vessels. They have carried out 515 operations, providing escorts to 4,901 vessels, of which half were foreign vessels, and they have achieved a 100 per cent success rate. China is willing, on a voluntary basis and with coordination on an equal footing, to continue strengthening coordination and information-sharing about military operations with the parties concerned. China has also, within its capacity, provided assistance to the countries in the Gulf of Guinea in their fight against piracy. We are ready to continue to strengthen cooperation and coordination with the countries concerned in order to play a more active and constructive role in our fight against piracy.⁴⁰

IX. International law on outer space

IX.A. Militarization of and arms race in outer space

39. On 18 October 2012, a Chinese representative made a statement at the Fourth Committee of the 67th Session of the UNGA on international co-operation in the peaceful uses of outer space. Regarding the militarization of and arms race in outer space, he said:

China always maintains that outer space be used for peaceful purposes. We are against the militarization of and arms race in outer space. China is of the view that a new international instrument needs to be negotiated and developed as soon as possible with a view to eliminating the security threat in the outer space ...⁴¹

40 Statement by Ambassador Wang Min at the Security Council Open Debate on Piracy (19 November 2012) (<http://www.china-un.org/eng/hyyfy/t993262.htm>). See also Statement by Ms. Guo Xiaomei, Head of Chinese Delegation to the Thirteenth Plenary Meeting of the Contact Group on Piracy off the Coast of Somalia (11 December 2012) (<http://www.china-un.org/eng/hyyfy/t997387.htm>).

41 Statement by Mr. Li Linlin of the Chinese Delegation at the Fourth Committee of the 67th Session of the UN General Assembly On International Cooperation in the Peaceful Uses of Out Space (18 October 2012) (<http://www.china-un.org/eng/hyyfy/t980877.htm>). See also Statement by H.E. Mr. WU Haitao, Ambassador for Disarmament Affairs of China, at the General Debate of the First Committee of the 67th Session of UNGA (11 October 2012) (<http://www.china-un.org/eng/hyyfy/t978364.htm>).

IX.B. Space debris

40. On 18 October 2012, a Chinese representative made a statement at the Fourth Committee of the 67th Session of the UNGA on international co-operation in the peaceful uses of outer space. Regarding space debris, he said:

China has been conducting space activities in a responsible manner and actively advocating the new concept of inclusive development. Over the last year, China closely monitored space debris and provided relevant early warning, continued to improve relevant standards and regulatory regime, carried out a complete passivation of the rockets in the Long March series, took measures to remove a number of disused geostationary satellites off their orbits, and steadily pushed forward its debris mitigation work. All these efforts have contributed to the long-term sustainability of space activities ...⁴²

IX.C. International co-operation in peaceful uses of outer space

41. On 18 October 2012, a Chinese representative made a statement at the Fourth Committee of the 67th Session of the UNGA on international co-operation in the peaceful uses of outer space. Regarding international co-operation in peaceful uses of outer space (COPUOS), he said:

China, actively responding to COPUOS's "Manned Space Technology Initiative", has offered more countries, especially developing countries, opportunities to participate in the construction and research of China's Space Station. Using platforms such as UN-SPIDER Beijing Office and Asia-Pacific Space Cooperation Organization, China is actively engaged in training, capacity-building, and data and technical services in the area of outer space with a view to sharing with other countries China's space development opportunities and results ... In addition, we also have the honor to inform that China's Beidou satellite navigation system will complete its Asia-Pacific sector and begin to provide services within this year. The Beidou is an open and inclusive system. China has started cooperation with countries such as Pakistan, and hopes to cooperate with more countries in the area of navigation ...⁴³

X. Aliens

X.A. Act on Administration of Exit and Entry

42. On 30 June 2012, the 27th Session of the Standing Committee of the 11th NPC adopted the Act on Administration of Exit and Entry (Chujing Rujing Guanli Fa). This

42 Statement by Mr. Li Linlin, above n.41.

43 Ibid.

Act will come into force on 1 July 2013, when the 1985 Act on Administration of Entry and Exit of Aliens (*Waiguoren Rujing Chujing Guanli Fa*) and the 1985 Act on Administration of Exit and Entry of Citizens (*Gongmin Chujing Rujing Guanli Fa*) will be abolished. This Act defines “exit” as the leave from inland China to other countries or regions, from inland China to Hong Kong Special Administrative Region, Macau Special Administrative Region, or from mainland China to Taiwan region. “Entry” is defined as entry from other countries or regions to inland China, from Hong Kong Special Administrative Region or Macau Special Administrative Region to inland China, or from Taiwan region to mainland China. “Alien” is defined as any person without Chinese nationality (article 89). This Act is applicable to the exit and entry of Chinese citizens, the entry and exit of aliens, the residence of aliens in China and border examination of exit and entry of transport vehicles. This Act provides that subject to approval by the State Council, the Ministry of Public Security and the Ministry of Foreign Affairs may, depending on the needs of the administration of exit and entry, make rules on human bodily biological identification information including fingerprints reserved at exit and entry. If foreign governments have special provisions on the administration of issuing visas to, and exit and entry of, Chinese citizens, the Chinese government may, depending on the circumstances, take corresponding reciprocal measures (article 7). No visa will be issued to an alien if one of the following circumstances applies: he or she (1) has been deported or repatriated, and the time of forbidding entry has not expired; (2) has a serious mental disorder, infectious tuberculosis or any other infectious disease which may cause serious danger to public health; (3) may endanger China’s national security and interest, damage social public order or commit any violation of law and crimes; (4) deceitfully applies for visa or is unable to afford the stay in China; (5) is unable to provide the relevant documents required by the visa organs; (6) any other circumstance for which the visa organs consider it not proper to issue visa. No reason would be given for the refusal to issue a visa (article 21). No alien is allowed to enter China if one of the following circumstances is found: (1) he or she does not hold a valid exit and entry certificate, or refuses to accept or escape from border examination; (2) one of the circumstances in article 21 (1)(1)–(4) of this Act is found; (3) he or she may commit any activity inconsistent with the type of visa; (4) any other circumstance for which laws or regulations forbid the entry. No reason would be given by the border examination organs to those who are refused to enter (article 25). No alien is allowed to exit if one of the following circumstances applies: (1) he or she has been convicted and sentenced but the sentence has not yet been carried out; or he or she is a criminal defendant or suspect, except in the case of transfer of the convicted persons in accordance with the relevant agreement concluded between China and foreign States; (2) he or she is not approved for exit by the people’s court due to involvement in an on-going civil case; (3) he or she is not approved for exit by the relevant organs of the State Council or provincial governments for not paying remuneration to labourers; (4) other circumstances under which

laws or administrative regulations forbid the exit (article 28). No alien who stays or resides in China shall commit any activity inconsistent with the reason for his or her stay and residence; every alien shall exit before the time of stay or residence expires (article 37). Any alien who works in China shall obtain work permit and residence certificate for work in accordance with relevant regulations. No unit or individual shall employ an alien without work permit or residence certificate for work (article 41). Illegal work is present if an alien commits any of the following activities: (1) works in China without work permit or residence certificate for work; (2) works in China beyond the scope of work permit; (3) foreign students work in China in violation of regulations on teaching assistance, beyond the scope of the position or limitation of hours (article 43). If an alien is applying for refugee status, he or she may stay in China by virtue of the temporary identity certificate issued by the public security organs during the period of identification. If refugee status is granted, he or she may stay and reside in China by virtue of the refugee identity certificate issued by the public security organs (article 46).⁴⁴

X.B. 72-hour visa-free travel to Beijing and Shanghai

43. The State Council approved the application from the Beijing municipal government on 28 April 2012, allowing foreigners of 45 countries to stay in Beijing without a Chinese visa for 72 hours. This measure entered into force on 1 January 2013. It also applies to Shanghai. Those 45 countries are: 31 European Union countries (Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom), 6 American countries (Argentina, Brazil, Canada, Chile, Mexico and the United States) and 8 Asian and Oceanian countries (Australia, Brunei, Japan, Qatar, New Zealand, Singapore, South Korea and the United Arab Emirates).⁴⁵

X.C. Draft articles on expulsion of aliens

44. On 2 November 2012, a Chinese representative made a statement on the Report of the International Law Commission on the work of its 63rd and 64th sessions at the 19th

44 The Act of the People's Republic of China on Administration of Exit and Entry (*Zhonghua Renmin Gongheguo Chujing Rujing Guanli Fa*), Xinhua News Agency (1 July 2012) (<http://www.mps.gov.cn/n16/n1282/n3493/n3778/n492788/3314375.html>).

45 Answers to Frequently Asked Questions Concerning 72-hour Transit Visa Exemption for Foreign Nationals (*Waiguoren 72 Xiaoshi Guojing Mianqian Changyu Wenti Jieta*), (24 May 2013) (<http://www.mps.gov.cn/n16/n84147/n84196/3797591.html>).

meeting of the Sixth Committee of the 67th Session of the UNGA. Regarding the topic of expulsion of aliens, the summary record states:

53. China welcomed the changes made since the previous session to the draft articles on expulsion of aliens, which reflected the Commission's efforts to achieve a balance between the regulatory power of expelling States and the legitimate rights of aliens subject to expulsion, while at the same time leaving States some room for manoeuvre in enforcing their domestic legislation. For example, draft article 19 (Detention conditions of an alien subject to expulsion) now allowed for the possibility that in exceptional circumstances aliens subject to expulsion might be detained with persons sentenced to penalties involving deprivation of liberty. That point addressed the concerns of countries, such as hers, in which expulsion was sometimes applied as an additional penalty to an alien convicted of a criminal offence.

54. There was still room for improvement of some draft articles, however. Paragraph 2 of draft article 23 (Obligation not to expel an alien to a State where his or her life or freedom would be threatened), for instance, constituted progressive development rather than codification of international law and deserved further study. Active participation of States would be essential to further improvement of the draft articles, since expulsion of aliens was an area with abundant national legislation and practice.⁴⁶

X.D. Refugees

45. On 29 February 2012, an FM spokesperson made a statement on the plan of the US and the EU to raise the issue of the Democratic People's Republic of Korea (DPRK) "defectors" in the UN Human Rights Council. He said:

We oppose relevant parties' discussion of the issue concerning illegal border crossers from the DPRK to China in relevant international agencies. These agencies are not the venue for such discussion. We have stated time and again that relevant illegal border crossers are not refugees. They crossed the border illegally out of economic purposes. We oppose the attempt to internationalize and politicize the issue and make it [a] refugee issue. China will stick to its long-standing practice and deal with relevant issue appropriately in accordance with domestic law, international law and humanitarian principles. It serves the common interests of all parties and meets the international common practice. We hope that China's judicial sovereignty will be respected and protected and relevant parties and people will not keep playing up this issue.⁴⁷

46 A/C.6/67/SR.19, above n.4, paras.53–54.

47 Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on February 29, 2012 (1 March 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/t910855.htm>).

46. On 26 June 2012, an FM spokesperson made a statement on some Myanmar people fleeing to Yunnan Province for shelter back to the conflict zones of Myanmar. He said:

Recently, due to the sporadic exchanges of fire between the Myanmar Government and some local ethnic armed forces, some Myanmar inhabitants in the border area entered China temporarily to seek shelter from their relatives and friends for the sake of safety. They are not refugees and go back to Myanmar once the situation calms. Upholding the spirit of humanitarianism, China has been providing living necessities to these people.⁴⁸

XI. International human rights law

XI.A. Human rights and the principle of non-interference of internal affairs

47. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the relationship between human rights and the principle of non-interference of internal affairs, he said that the international community shall:

... firmly adhere to the purposes and principles of the Charter of the United Nations and refraining from interfering in other countries' internal affairs under the pretext of human rights. Under the current international circumstances, it is of special significance and relevance to abide by the purposes and principles of the Charter of the United Nations, in particular such important principles as respect for sovereignty and territorial integrity and non-interference in internal affairs, and to safeguard the authority and role of the United Nations. The international community should respect the path of human rights development and model for safeguarding human rights chosen independently by governments in view of their national conditions ...⁴⁹

XI.B. Human rights, politicization and double standards

48. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the issue of human rights, politicization, and double standards, he said that the international community shall

48 Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on June 26, 2012 (27 June 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t946238.shtml>).

49 Statement by Ambassador Wang Min at the Third Committee of the 67th Session of the General Assembly on Human Rights (8 November 2012) (<http://www.china-un.org/eng/hyyfy/t987111.htm>).

... reject politicization of and double standard on the issue of human rights and enhancing human rights dialogue and cooperation. Some countries always turn a blind eye to violations of human rights at home, but are keen on pressuring developing countries with country-specific human rights issues and creating confrontation in international human rights arena. This has undermined mutual trust among countries and impeded human rights cooperation. China is firmly opposed to such practice and urges those countries to reflect more on their own record and stop their self-righteous lecturing and finger pointing. China calls on all countries to proceed on the basis of equality and mutual respect, act in the spirit of openness and inclusiveness, seek common ground while shelving differences, and learn from each other's experience so as to make common progress ...⁵⁰

XI.C. Human rights and national conditions

49. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the impact on national conditions on human rights, he said:

The facts prove that only by combining the universal principles of human rights with specific national conditions can an applicable and efficient human rights development strategy be chartered. Only by putting the people's rights to survival and development first and fully safeguarding people's legitimate rights and interests on the basis of rapid and sound social and economic development, can an effective way to improve human rights be found. By following such experiences, Chinese government has found out a human rights development path with Chinese characteristics and attuned to China's national conditions, which not only has brought great benefits to the Chinese people, but also made tremendous contributions to the development of international human rights endeavor ...⁵¹

XI.D. Right to survival and right to development

50. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the rights to survival and development, he said that the international community shall

... echo[] the calls of developing countries for the right to development and push [] vigorously for the realization of economic, social and cultural rights. The international community should give genuine attention to the rights to survival and development of developing countries as well as their rights to food and health and other economic, social and cultural rights and help them achieve development at an early date. To this end, developed countries should demonstrate political will,

50 Ibid.

51 Ibid.

honor their ODA commitments, and increase financial and technical support for developing countries instead of focusing on criticizing the human rights situation of developing countries ...⁵²

XI.E. Human security

51. On 10 September 2012, a Chinese representative made explanatory remarks on the adoption of a resolution on human security by the UNGA. He said:

First, the concept of human security originated with United Nations Development Programme reports on development. Human security is in essence an issue of development. Helping developing countries to emerge from poverty as quickly as possible, achieve sustainable economic and social development and implement the Millennium Development Goals should be a priority and the central aim of a human security policy. Secondly, Governments have the primary responsibility for ensuring the survival, development, dignity and security of their peoples. Human security must be based on the purposes and principles of the United Nations Charter, namely, respect for national sovereignty, independence, unity and territorial integrity, non-interference in internal affairs and other basic principles of international relations. The pursuit of human security should not lead to the use of coercive measures, and even less should it be used as an excuse or carrying out humanitarian intervention. Thirdly, Member States still have different interpretations of the definition and the concept of human security. It is necessary to continue the in depth examination of its content and extension so as to achieve a clear and widely accepted definition.⁵³

XI.F. Discrimination and racism

52. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding discrimination and racism, in particular religion, he said that the international community shall

... eliminate all forms of discrimination and building a harmonious and inclusive world. Not long ago a video defaming Muslims provoked wide-spread protests. To China, it is a matter of great concern. China stands for dialogue and interaction among civilizations and religions, and for their mutual respect and equality. We are opposed to any action that offends the religious sensitivities of Muslims. States must enforce a “zero tolerance” policy on racism in all its

52 Ibid.

53 GA 66th Session, 127th Plenary Meeting, 10 September 2012, Agenda item 13, Doc. No. A/66/PV.127, pp. 6–7 (http://www.un.org/ga/search/view_doc.asp?symbol=A/66/PV.127).

forms and manifestations and must not acquiesce to racism and religious intolerance under the pretext of freedom of expression ...⁵⁴

XI.G. Right to self-determination

53. On 5 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on Agenda Item 67(a), (b) and 68: Elimination of Racism and Right of People to Self-determination. Regarding the right to self-determination, she said:

The right to self-determination played an important role in history and has not lost its relevance today. It served as a forceful weapon in the struggle of the oppressed nations against imperialist and colonialist domination and for national independence and liberation. At present, it remains a sacred principle under which peoples of the world choose their own political and social systems, economic models and paths of development; fight against foreign aggression, interference and control; and safeguard their national sovereignty independence and territorial integrity. At the same time, there must be a comprehensive and correct interpretation of the principle of national self-determination. Some people use national self-determination as disguise to pursue their ulterior motives and openly advocate the division of sovereign states. Such acts constitute wanton disrespect for the Charter of the United Nations and basic principles of international law, and should therefore be condemned and resolutely opposed by all the people of the world.⁵⁵

XI.H. Rights of indigenous peoples

54. On 22 October 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on Agenda Item 66: Rights of Indigenous Peoples. He said:

Although there are neither indigenous people nor indigenous issues in China, we steadfastly support the promotion and protection of basic human rights and freedom of the world's indigenous peoples. For years, it has actively supported and participated in relevant activities of the UN, including those of the Permanent Forum on Indigenous Issues. In the future, the Chinese government will continue to work with others and play a proactive and constructive part in safeguarding the rights and interests of indigenous peoples, promoting their

54 Statement by Ambassador Wang Min, above n.49. See also Chinese Statement at the Third Committee of the 67th Session of the General Assembly on Agenda Item 67(a, b)& 68, above n.6.

55 Chinese Statement at the Third Committee of the 67th Session of the General Assembly on Agenda Item 67(a, b)& 68, above n.6.

full participation in economic and social development, and pushing for the comprehensive implementation of the Declaration ...⁵⁶

XI.J. Initial report under the Convention on the Rights of Persons with Disabilities

55. The Committee on the Rights of Persons with Disabilities considered the initial report of China (CRPD/C/CHN/1), including Hong Kong, China (CRPD/C/CHN-HKG/1) and Macao, China (CRPD/C/CHN-MAC/1), at its 77th and 78th meetings, held on 18 and 19 September 2012, and adopted the concluding observations at its 91st meeting, held on 27 September 2012.⁵⁷

XI.K. The Second Amendment to the 1979 Criminal Procedural Code

56. The Criminal Procedural Code of the People's Republic of China was adopted at the Second Session of the Fifth NPC on 1 July 1979. It was amended for the first time at the Fourth Session of the Eighth NPC on 17 March 1996. The Second Amendment was adopted at the Fifth Session of the 11th NPC on 14 March 2012, and came into force on 1 January 2013. It made a number of significant revisions to the 1996 Criminal Procedural Code, in particular evidence, cohesive measures, defense, examination, trial, execution, etc. One of the most outstanding revisions to the general principles of Chinese criminal procedural law is that the Second Amendment introduced "respect and guarantee human rights", an expression which first appeared in Chinese law under article 24 of the Fourth Amendment to the Constitution in 2004, into article 2, which clarifies the task of the Chinese criminal procedural law.⁵⁸

XI.L. Act on Administration of Exit and Entry

57. According to the Act on Administration of Exit and Entry, adopted at the 27th Session of the Standing Committee of the 11th NPC on 30 June 2012, a Chinese citizen is not allowed to exit if one of the following circumstances applies: he or she (1) does not hold a valid exit and entry certificate, or escape from receiving border examination; (2) is serving the criminal penalties or is a defendant or suspect in a criminal case; (3) has not been approved for exit by people's courts since he or she is involved

56 Statement by Mr. Han Qing of the Chinese Delegation at the Third Committee of the 67th Session of the General Assembly on Agenda Item 66: Rights of Indigenous Peoples (22 October 2012) (<http://www.china-un.org/eng/hyyfy/t982303.htm>).

57 CRPD/C/CHN/CO/1. The full text of the concluding observations on China and its two special administrative regions, i.e. Hong Kong and Macau, is available at : <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session8.aspx>.

58 Human rights underlined in China's long-anticipated criminal procedure law revision (14 March 2012) (http://www.npc.gov.cn/englishnpc/news/Events/2012-03/14/content_1713820.htm).

in civil cases; (4) has been subjected to criminal penalties for violating administration of borders, repatriated by other countries or regions for illegal exit, illegal residence or illegal employment, and the time of forbidding exit has not expired; (5) has not been approved for exit by the competent authorities of the State Council for possible danger to state security and interest; (6) other circumstances of forbidding exit provided by laws or administrative regulations (article 12). Those Chinese citizens who reside in foreign countries and wish to come back to China for residence shall lodge an application with Chinese embassies or consulates abroad, or with other organs designated by the Ministry of Foreign Affairs abroad; they may lodge an application with departments of overseas Chinese under the local governments where they wish to reside through themselves or relatives residing in China (article 13).⁵⁹

XI.M. Work of the UN Secretariat in human rights

58. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the work of the UN Secretariat in human rights, he said:

The UN Secretariat should effectively implement the principle of equitable geographical distribution and increase the representation of developing countries in the UN human rights bodies ...⁶⁰

XI.N. Office of the High Commissioner for Human Rights

59. On 8 November 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA on human rights. Regarding the Office of the High Commissioner for Human Rights (OHCHR), he said:

The OHCHR should strengthen dialogue with member states, enhance the objectivity, equitability and transparency of its work and accept the supervision of the Human Rights Council ...⁶¹

XI.O. Human Rights Treaty bodies and their reform

60. On 23 October 2012, a Chinese representative made a statement at the Third Committee of the UNGA on Agenda Item 70(a): Implementation of Human Rights Instruments. She said:

59 The Act of the People's Republic of China on Administration of Exit and Entry (Zhonghua Renmin Gongheguo Chujing Rujing Guanli Fa), Xinhua News Agency (1 July 2012) (<http://www.mps.gov.cn/n16/n1282/n3493/n3778/n492788/3314375.html>), above n.44.

60 Statement by Ambassador Wang Min, above n.49.

61 Ibid.

The Chinese delegation takes note of the Secretary-General's report under this agenda item, and welcomes the dialogues between treaty body chairpersons with the Third Committee. Over time, treaty bodies are increasingly beset with problems such as heavy work load and large backlogs. China welcomes the adoption by the 66th Session of the General Assembly of Resolution A/Res/66/254, and supports the inclusion of treaty body reforms in the GA intergovernmental process. We look forward to working with other delegations to seek the broadest consensus on the issue of reform by taking a step by step approach and through constructive consultations, so as to lay a solid foundation for the healthy development of treaty bodies. China believes that treaty body reform shall promote constructive dialogue between treaty bodies and States parties with a view to ensuring the objectivity and impartiality of the work of treaty bodies and avoiding politicization and selectiveness. Discussions in the reform process within the GA framework should focus on such issues as improving the efficiency of treaty bodies, reducing burdens on States parties, enhancing the role of conferences of States parties, and formulating codes of conduct for treaty body experts, etc. An essential character of the reform process within the framework of the UNGA is its intergovernmental nature. As founders of treaty bodies and main actors in the implementation of treaty obligations, States parties should play the leading role in the reform process. China welcomes advice and recommendations from treaty bodies and other stakeholders, whose participation shall follow provisions of the Resolution and the rules of procedure of the General Assembly ...⁶²

XII. International humanitarian law

XII.A. Protection of civilians in armed conflicts

61. On 25 June 2012, a Chinese representative made remarks at the UNSC open debate on protection of civilians in armed conflict. He emphasized that the recent practice of the Security Council of assigning mandates on the protection of civilians has triggered enormous controversies and promoted deep reflection by the international community. He then focused on the following four points:

First, all parties to the conflict must spare no effort in protecting civilians. In the event of an armed conflict, the primary responsibility to protect civilians from violence and the scourge of war lies with national Governments. At the same time, all parties involved in conflict and other relevant domestic and foreign actors are also in duty bound to abide by international humanitarian law and other relevant

62 Statement by Ms. LI Xiaomei of the Chinese Delegation at the Third Committee of the UN General Assembly on Agenda Item 70(a): the Implementation of Human Rights Instruments (23 October 2012) (<http://www.china-un.org/eng/hyyfy/t981899.htm>). See also Statement by Ambassador Wang Min, above n.49.

provisions of international law, and to fulfill their responsibilities in the protection of civilians. The actions of one party to the conflict in violation of international law should under no circumstances constitute an excuse for any other party to breach its obligations under such law. The report of the Secretary-General makes reference to the use of drones and other challenges in the protection of civilians, all of which deserve our focused attention. Secondly, in the process of fulfilling the duty of protecting civilians, the purposes and principles of the Charter of the United Nations must be upheld, especially the principles of respect for national sovereignty, unity and territorial integrity as well as that of non-interference in internal affairs. Operations involving the protection of civilians must be authorized by the Security Council and carried out in an orderly manner under the auspices of the United Nations. No party should arbitrarily interpret Security Council resolutions; no actions overstepping Council mandates should be allowed. The protection of civilians is humanitarian in nature and should not be exploited to serve political motives or objectives, including regime change. The rigorous and effective monitoring of the implementation of Security Council resolutions has become an important task that must be accomplished urgently. Thirdly, the authorization of the use of force in the protection of civilians must be approached with extreme caution. China believes in the political and peaceful resolution of disputes, as military intervention often proves counterproductive. There are serious shortcomings in such interventions, such as ill-defined responsibilities, unclear authorizations and lack of *ex post facto* accountability. Rather than resolving conflicts and protecting lives, military intervention adds fuel to the fire and exacerbates humanitarian crises. Last but not least, the practice of selectivity and double standards must be abandoned. Many Member States have long been urging the Security Council to uphold the principles of fairness and impartiality and pay equal attention to all items on the Council's agenda relating to the protection of civilians, including the situations in the Gaza Strip, Somalia, Afghanistan and Iraq. China endorses such views. Adopting a practice of selectivity or double standards would only harm the role and authority of the Security Council.⁶³

XII.B. Fourth Annual Session of Chinese National Committee of International Humanitarian Law

62. On 24 February 2012, a Chinese National Committee on International Humanitarian Law held its fourth annual session in Beijing. High officials from the

63 Remarks by Ambassador Li Baodong, Permanent Representative of China to the United Nations, at the Security Council Open Debate on Protection of Civilians in Armed Conflict (25 June 2012) (<http://www.china-un.org/eng/hyyfy/t966334.htm>). See also Position Paper of the People's Republic of China at the 67th Session of the United Nations General Assembly (20 September 2012) (<http://www.china-un.org/eng/hyyfy/t971887.htm>).

member organs of the Committee, as well as legal experts from a few universities, attended the session. The member organs attending the session included the Standing Committee of the National People's Congress, the Ministry of Justice, the Central Military Commission (CMC), the Ministry of Foreign Affairs, the Ministry of Education, and the State Administration of Cultural Heritage. The Red Cross Society of China also attended this session. In the session, the Vice President of the Committee made a report on its work in 2011. She said that the Committee will actively participate in the relevant international humanitarian activities, promote international co-operation, and enhance the research of international humanitarian law in 2012. The President of the Committee also addressed to the session, and called for further promoting the dissemination of international humanitarian law in China in 2012.⁶⁴

XII.C. Litigation of Chinese victims against Japan before a court in Chongqing

63. On 10 September 2012, 15 Chinese victims took a legal action against Japan before Chongqing Municipal Higher People's Court for war damage caused by Japan's air bombing of Chongqing in the period between 1938 and 1943. One of the plaintiffs is now 92 years old. The victims claim a formal apology and damages from the Japanese government. This is one among a few recent cases where the Chinese victims of the Japanese invasion of China during the period from 1931 to 1945 took legal action before Chinese courts. No subsequent development of this case has been reported. It is not clear whether the Chongqing Municipal Higher People's Court has docketed this case. It was estimated that during the period from 1938 to 1943, the Japanese air force bombed Chongqing, the then Chinese Provisional Capital, 218 times with over 9,000 times of battle planes. The campaign dropped more than 1,100 bombs on Chongqing, causing the deaths of over 10,000 civilians.⁶⁵

XII.D. Legal advisers in Chinese armed forces

64. In the Chinese army, the departments exercising judicial administration have been created from the organs of the General Departments at the level of regiments.

64 The Fourth Annual Session of the Chinese National Committee of International Humanitarian Law Opened (Zhongguo Guoji Rendaofa Disici Quanti Huiyi Zhaokai), (29 February 2012) (http://news.china.com.cn/rollnews/2012-02/29/content_12994813.htm).

65 15 Victims of Chongqing Bombing Sued Japanese Government Before the Chongqing Court (Shiwu ming Chongqing Dabaozha Shouhaizhe zai Chongqing Qisu Riben Zhengfu), China Huanqiu (20 September 2012) (<http://china.huanqiu.com/hot/2012-09/3132688.html>).

The legal advice divisions (*falv guwen chu*) have been set up at or above the level of armies. Below the level of the legal advice divisions, legal consultation stations (*falv zixun zhan*) have been set up. In terms of staff, there are judicial secretaries (*sifa mishu*), army lawyers (*jundui lvshi*), as well as grass-root legal service staff (*jiceng falv fuwu gongzuo zhe*) and legal consultants (*falv zixun yuan*). In particular, army lawyers were assigned to parts of land forces in the year of 2000, and subsequently army lawyers were also assigned to parts of the Second Artillery and armed police forces. As of June 2012, there were 268 legal advice divisions, over 1,600 legal consultation stations, over 1,400 army lawyers and over 24,000 legal consultants. The general legal advisers were also allocated in the Chinese forces in participation of China–Russia joint military exercises and the Chinese navy fleet navigating in the waters off the Somalian coast.⁶⁶

XIII. International law on disasters

XIII.A. Strengthening of the co-ordination of humanitarian and disaster relief assistance of the UN, including special economic assistance

65. On 13 December 2012, a Chinese representative made a statement at the 67th Session of the GA under agenda item 70: “Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the UN, Including Special Economic Assistance”. He said:

Firstly, any humanitarian relief operation must be premised on the fundamental principles set out in the GA Resolution 46/182. In providing humanitarian relief, it is imperative to abide by the fundamental humanitarian principles of the UN, respect the sovereignty, independence, unity and territorial integrity of recipient countries, comply with international law and the laws of the host countries, avoid politicization of humanitarian issues and adhere to non-militarization of humanitarian assistance. Secondly, effective strengthening of capacity building is essential for relieving the pressure of humanitarian needs. As a firm supporter of and advocate for the strengthening of capacity building in humanitarian and development fields, China believes that the most important task at the moment is to take concrete and effective measures in view of different countries’ specific needs, including increase input, transfer technology and expertise to developing countries and step up infrastructure building, to help countries affected by disasters, developing countries in particular, to

66 The Innovative Development of Army Judicial Administration and Legal Service Work since the Sixteenth Party Conference (Dang de Shiliuda Yilai Jundui Sifa Xingzheng he Falv Fuwu Gongzuo de Chuangxin Fazhan), *Legal Daily* (Fazhi Ribao), 12 November 2012 (<http://cpc.people.com.cn/18/n/2012/1112/c350837-19555771-3.html>).

strengthen capacity building in an all-round way. By so doing, humanitarian needs will be lessened, root causes for the deterioration of situations will be tackled and the people affected by disasters will really feel the benefit of capacity building. Thirdly, building partnerships is an important means to enhance cooperation and integrate resources. With ever-growing humanitarian needs, humanitarian relief actors have multiplied, which makes the establishment of partnerships all the more important. China believes that three issues merit our attention in building effective partnerships: 1. The leading position of affected countries should be upheld and any form of partnership must be built on the basis of equality and mutual benefit and on the premise of respecting the will of the governments of the countries affected. 2. Well functioning and effective participation and coordination mechanisms should be put in place to encourage effective cooperation and connection among humanitarian actors in order to ensure the maximum utilization of resources and enhance the effectiveness of humanitarian relief. 3. The existing mechanisms and resources of the UN should be fully utilized to play a coordinating and pivotal role in partnership building. Fourthly, efficient functioning of the humanitarian system of the U.N. is an important guarantee for effective humanitarian relief. In the past two years, under the leadership of Under-Secretary-General Amos, OCHA has played an irreplaceable role in appealing for donations and coordinating among various actors. China commends its work and hopes that the U.N. humanitarian system will further improve its mechanisms, intensify the reform of its humanitarian activities, increase participation of member states, improve management and enhance efficiency, so that the U.N. will play a bigger role in international humanitarian affairs. As a developing country prone to natural disasters, China knows all too well the sufferings disasters inflict on the people affected. Therefore, the Chinese Government attaches great importance to international cooperation in the humanitarian field, actively participates in multilateral and bilateral humanitarian assistance, and shares with other developing countries experience and technologies of coping with natural disasters. Since the beginning of this year, China has provided food assistance to Chad and other countries in the Sahel region of Africa, and has provided humanitarian assistance to Cuba and Syria, among others. China will continue to follow closely the humanitarian situation in the Sahel region and contribute within its means to the international humanitarian endeavor.⁶⁷

67 Statement by Ambassador Li Baodong at the 67th Session of the GA under agenda item 70: Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance (13 December 2012) (<http://www.china-un.org/eng/hyyfy/t998099.htm>).

XIV. International law on arms control, disarmament and non-proliferation

XIV.A. Nuclear disarmament

66. On 18 October 2012, a Chinese representative made a statement at the thematic debate at the First Committee of the 67th session of the UNGA. He urged the international community to make further efforts in the following aspects:

First, all nuclear-weapon states should fulfill in good faith nuclear disarmament obligations under the NPT, and publicly undertake not to seek permanent possession of nuclear weapons. Countries with the largest nuclear arsenals should continue to take the lead in making drastic reductions in their nuclear weapons in a verifiable and irreversible manner so as to create conditions for comprehensive and thorough nuclear disarmament. The international community should also develop, at an appropriate time, a viable, long-term plan composed of phased actions, including the conclusion of a convention on the complete prohibition of nuclear weapons. Second, all nuclear-weapon states should abandon the nuclear deterrence policy based on first use of nuclear weapons and unequivocally undertake no-first-use of nuclear weapons and negotiate and conclude a treaty on no-first-use of nuclear weapons against one another. Nuclear-weapon states should also unequivocally undertake not using or threatening to use nuclear weapons against non-nuclear-weapon states or nuclear-weapon-free zones, and conclude a legally-binding international instrument in this regard at an early date. The policy and practice of nuclear umbrella and nuclear sharing should be abandoned. Countries that deploy nuclear weapons abroad should withdraw all such weapons. Efforts by relevant countries to establish nuclear-weapon-free zones should be supported. Third, countries that have not done so should sign and ratify the Comprehensive Nuclear-Test-Ban Treaty (CTBT) to facilitate its early entry-into-force in accordance with relevant provisions of the Treaty. The nuclear weapon states should continue to observe their moratoria on nuclear explosion tests. The Conference on Disarmament in Geneva is the only appropriate forum to negotiate a Fissile Material Cut-off Treaty (FMCT). It has the most representative membership, with the Rules of Procedure which can fully protect the interests of the member States, as well as rich experience and necessary expertise in negotiations. Negotiations on such a treaty with the participation of all relevant parties should commence in the CD as soon as possible. Fourth, nuclear disarmament should follow the principles of promoting international stability, peace and security and undiminished security for all. The development of missile defense systems that undermine global strategic balance and stability should be abandoned. Multilateral negotiations on preventing the weaponization of and an arms race in outer space should

be vigorously promoted so as to create favorable international strategic security environment for nuclear disarmament.⁶⁸

He then further introduced the Chinese policies in this regard:

China has consistently stood for the complete prohibition and thorough destruction of nuclear weapons and is firmly committed to a nuclear strategy of self-defense. China has adhered to the policy of no-first-use of nuclear weapons at any time or under any circumstances, and made the unequivocal commitment that it will unconditionally not use or threaten to use nuclear weapons against non-nuclear-weapon states or nuclear-weapon-free zones. Such nuclear policy is unique among all nuclear-weapon states. China has never deployed any nuclear weapons on foreign territory. It has never participated in any form of nuclear arms race, nor will it ever do so. China will continue to keep its nuclear capabilities at the minimum level required for national security.⁶⁹

XIV.B. Mongolia's nuclear-weapons-free status

67. On 17 September 2012, the Chinese Permanent Representative to the UN, together with other four Permanent Representatives to the UN (USA, Russia, France and the UK), signed parallel political declarations with the Mongolian Permanent Representative to the UN regarding Mongolia's self-declared nuclear-free status. In the declaration, the five nuclear weapon States reaffirmed the joint statement on security assurance they made in connection with Mongolia's nuclear-weapons-free status at the UNGA in October 2000. They also affirmed their intent to respect Mongolia's nuclear-weapons-free status and not to contribute to any act that would violate it.⁷⁰

XIV.C. Chemical Weapons Convention

68. On 26 November 2012, a Chinese representative made a statement at the general debate of the 17th session of the conference to the States parties to the Chemical Weapons Convention. He elaborated China's position as follows:

1. Chemical disarmament remains the priority task of the Organization for the Prohibition of Chemical Weapons (OPCW). In the 15 years after the entry into force of the Convention, considerable efforts for CW [chemical weapons] destruction were made by possessor States, leading to a substantial reduction of CW stockpiles short of, however, the complete destruction of all stockpiles

68 (<http://www.china-un.org/eng/hyyfy/t980543.htm>). See also Statement by H.E. Mr. WU Haitao at the 67th Session of UNGA, above n.41.

69 <http://www.china-un.org/eng/hyyfy/t980543.htm>, above n.68.

70 Chinese Permanent Representative to the UN, Mr. Li Baodong, Attended the Signing Ceremony on the Common Declaration, (17 September 2012) (<http://www.china-un.org/chn/hyyfy/t970361.htm>).

within the final extended deadline as prescribed by the Convention. At last session of the Conference, thanks to joint efforts from all sides, a solution was found to the enormous challenge in the face of the Convention posed by the probable failure to meet the said deadline.

Nevertheless, the process of chemical disarmament should not end there. The relevant states parties should implement faithfully the relevant decision of the Conference and continue to make efforts with a view to completing their destruction at the earliest within the established timeframes, so as to minimise the negative impact on the Convention caused by their not meeting the final extended deadline. The OPCW should ensure the input of verification resources and the Secretariat should continue to exercise effective monitoring of the destruction process.

2. Complete destruction at the earliest of chemical weapons abandoned by Japan in China is a matter which brooks no delay. This issue relates critically to the core objective and credibility of the Convention and bears on the safety of life, property and environment of the Chinese people. To date, Japanese ACWs continue to cause casualties and thus pose an even higher realistic risk than CW stockpiles. We have noted that despite much effort by Japan to address this issue and some progress in the destruction process, the current status of destruction has noticeably fallen behind the timeframes established in the decision on future destruction of Japanese ACWs adopted by the Council last February (EC-67/DEC.6). China urges Japan to increase its input with a view to completing destruction at the earliest within the timeframes in compliance with the destruction plan. China will continue to attach importance to effective monitoring by the OPCW of the destruction process, and will take an active part in the tripartite consultations between China, Japan and the Secretariat for the optimisation of verification. The Conference of States Parties and the Review Conference should give full attention to and undertake timely reviews on any progress made in the destruction of Japanese ACWs. Pursuant to the above-mentioned Council decision, China would welcome visits in due time by members of the Council to destruction facilities to obtain firsthand information.

3. Universality of the Convention is a precondition for the achievement of its object and purpose. Fifteen years after the entry into force of the Convention, with the joint efforts of successive Director-Generals and States Parties, we have moved remarkably closer towards universality and have seen ever widening influence of the Convention. Always in support of the universality of the Convention, China is prepared to work alongside all other parties to further promote it in order to achieve the goal of a CW-free world at an early date.

4. Full implementation of Article X of the Convention will help enhance national capacities to respond to CW threat and chemical emergencies. China appreciates the numerous activities conducted by the Secretariat to promote capacity-building for chemical protection in States Parties. China makes its own

contribution in various ways, such as financial donations to the OPCW, provision of protective equipment, and co-organisation of training courses and workshops. In May this year, China and the OPCW again jointly organised in Beijing a training course on assistance-and-protection, which yielded with good results.

5. International cooperation is one of the main pillars of the Convention and has a profound significance for its full and effective implementation. Over the years, the OPCW and the States Parties have made great efforts to foster international cooperation in the field of chemical industry, but there is still much to do to meet the practical needs of the great number of developing countries. China believes that the decision on international cooperation, the first of its kind, adopted by the Conference last year has invigorated efforts for the full and effective implementation of Article XI. It is important that we move to take real actions to put it into practice.

China actively supports and participates in international cooperation in the field of chemical industry. Last September, China and the OPCW organised jointly in China the first Asian workshop on Article XI. I wish to thank the Deputy Director-General for travelling to China to open and address this workshop, which served as a platform for Asian States Parties to exchange experiences and to learn from each other. China values highly the implementation of the African Programme and views this programme as an exemplary model for the OPCW's international cooperation activities. China remains ready to offer training projects for chemical industry personnel in African States Parties and will continue to provide assistance within its capacities to improve capacity-building for national implementation in Africa.

6. Future development planning of the OPCW should be aimed at the full achievement of the object and purpose of the Convention. The OPCW should continue to take vigorous promotion and effective monitoring of chemical disarmament as its priority task, while carrying out, in a balanced manner, tasks relating to other main pillars of the Convention such as industry verification, protection and assistance, and international cooperation. In view of the fact that the future development of the Organisation is an issue that touches upon many factors, including political, legal, financial, institutional and staffing aspects, any decision in this regard should be made democratically through an open and transparent process on the basis of broad participation and in-depth deliberation among States Parties. The Third Review Conference to be held next spring will be an important event, at which China hopes that the future development of the OPCW will be planned. China appreciates the extensive work of the preparatory working group led by the ambassador of Algeria. We hope that an early agreement will be reached on the final document which gives full expression of the views from all parties. This will create conditions for the success of the Third Review Conference.⁷¹

71 Statement by Mr Liu Zhixian, Head of the Chinese Delegation, at the General Debate of the Seventeenth Session of the Conference of the States Parties to the Chemical

69. He then further introduced China's performance of its obligations under the Convention. He said:

China has consistently supported the object and purpose of the Convention and earnestly fulfilled its obligations under the Convention. We have promulgated all-encompassing legislations and regulations for implementation and have put them into effect. We have established implementation bodies at both the central and local levels, and have laid a solid foundation for effective implementation through close communication and active co-ordination. China has submitted all declarations on time and has received over 300 OPCW inspections smoothly. This year we have already received 35 inspections, including 27 industry inspections.⁷²

XIV.D. Biological Weapons Convention

70. On 16 July 2012, a Chinese representative made a statement at the 2012 meeting of experts of Biological Weapons Convention. He said:

I. Development in the field of science and technology related to the Convention

The developments of modern bio-science and technology, especially in the field of synthetic biology, genomics, systems biology and targeted drug delivery technology play an important role in helping mankind combat disease and improve health. Meanwhile, there are increasing risks that new types of biotechnology are used for hostile purposes, constituting a potential threat to human society. The Chinese delegation has submitted working paper entitled *The Effect/Impact of Biotechnology Progress on BWC* to this meeting, elaborating Chinese views and opinions on this issue.

Timely assessment of the impacts of bio-science and technology on the Convention, sharing best practice on biological risk management will be conducive to reducing the risks of misuse of biotechnology and encountering challenges brought by the advancement of biotechnology. The Chinese government believes that, while developing bio-science and technology pursuant to the principle of the Convention, States Parties could, taking into account of their national conditions, strengthen their capacity building on biosafety and biosecurity, formulate best standard for developing bio-science and technology on a voluntary basis, and carry out biosafety and biosecurity education to relevant personnel. States Parties may also promote the exchange of experience on biosafety and biosecurity management by strengthening cooperation in relevant areas.

II. Confidence-Building Measures

Weapons Convention (26 November 2012) (<http://nl.china-embassy.org/eng/OPCW/t994788.htm>).

72 Ibid.

The Chinese government considers the Confidence-Building Measures (CBMs) to be an important way for States Parties to show their commitments to the Convention and enhance mutual trust. To increase transparency, China had submitted additional information on BL-3 laboratory before the modification of the CBMs forms in the Seventh Review Conference. We encourage States Parties to actively submit annual CBMs data. However, the CBMs are not obligatory in nature, and the differences in national conditions and capacity of States Parties should be taken into account. And necessary support and assistance should be provided to those in need.

III. Strengthening national implementation

China welcomes the efforts constantly made by States Parties to strengthen their national implementation measures and establish relevant mechanism, and supports States Parties to make improvement according to their national conditions and domestic laws and regulations. Regarding the national implementation, various proposals have been put forward. States Parties should be encouraged to take measures, such as exchange of information on implementation and conducting bilateral communication, to strengthen national implementation on a gradual and voluntary basis. Meanwhile, China always believes that the best compliance mechanism is to conclude a protocol with verification regime to enhance the effectiveness of the Convention comprehensively.

IV. Cooperation and assistance

International cooperation and exchange to promote peaceful use of biotechnology remains one of the prominent pillars of the Convention. China consistently supports the strengthening of international cooperation, encourages States Parties to carry out joint research and exchange of equipment, technology and personnel for peaceful purposes. China actively implements Article X of the Convention, and has built up cooperation with many countries in various fields including infectious disease response, biosafety and biosecurity, medical care and public health, with fruitful outcomes. China appreciates ISU's efforts in establishing and maintaining the international cooperation database and welcomes States Parties to further enhance cooperation in line with the objectives of the Convention. China is ready to share with other countries useful practices and experience.⁷³

73 Statement by the Chinese Delegation at the 2012 Meeting of Experts of BWC, Geneva, 16 July 2012 (24 July 2012) (<http://www.china-un.ch/eng/hom/t954912.htm>). See also Statement by H.E.Ambassador Wu Haitao, Head of the Chinese Delegation at the 2012 Meeting of States Parties to the Biological Weapons Convention (11 December 2012) (<http://www.china-un.ch/eng/hom/t997146.htm>).

71. In this meeting, China submitted a working paper on the effect/impact of biotechnology progress on Biological Weapons Convention. The working paper is as follows:

During the recent years, biotechnology has made great advances. The development in some areas, such as synthetic biology, genomics, systematic biology and enabling technologies, is especially noticeable. On one hand, these developments have greatly promoted the improvement of biological sciences, which is of great importance for the elucidation of molecular mechanisms of relevant diseases and design of efficient prevention and treatment measures. On the other hand, these developments have created new challenges and risks, and the negative effects have become more obvious.

1. Synthetic biology

From the synthesis of a single gene, single pathway, single chromosome to the totally chemical synthesis of the whole microbiological genome with life features, synthetic biology has made remarkable progress. Due to its impact on human health, social and economic development, and even the environment, as well as its potential risks of misuse, the development of synthetic biology is attracting much attention.

At present, the diverse standard DNA regulatory elements or modules have been designed, synthesized and deposited, which can be further combined to construct whole pathways, complex genetic networks with special functions. The artificial design and reconstruction of terpenoid synthesis pathways and biological production of Artesunate acid, the precursor of antimalarial drug in yeast are cases of typical successful application of synthetic biology to the green production of medical drugs to facilitate the human health.

Creation of a new form of bacterial cell controlled by a totally chemically synthesized genome which was transferred to a genome DNA repelled “empty cell” is a great event during synthetic biology development.

The rapid advancement of high-throughput DNA synthesis has greatly reduced the technical “bottle neck” of synthetic biology. As DNA synthesis becomes faster, cheaper and more efficient, the risks of its misuse are greatly increased.

The high throughput/automatic DNA chemical synthesis and assembly have greatly facilitated the availability of research materials of different countries, while providing a good opportunity for the efficient monitoring and control of DNA synthesis. By establishing commercial order sorting, filtering and differential authorizing website administration system connected to the central pathogenic microbiology genome database, the whole process of researches related to pathogenic microbes can be efficiently monitored and controlled.

2. Genomics

Ever since the Human Genome Project was completed in 2003, relevant researches are developing rapidly. Different large-scale genome projects, such as 1000 Genomes Projects, the Earth Microbiome Project, are under way.

While the results of 1000 Genomes Project and other relevant researches have revealed diverse human population specific genetic variations and associated functions, the GWAS (Genome-wide association study) has strongly indicated that the population-specific genetic variation is related to disease sensitivity. The confirmation of the correlation between genetic variation and disease sensitivity makes it possible to improve the specific microbes' pathogenicity, infectivity, and host specificity using combinatorial approaches of synthetic biology, reverse genetics and whole genome in vitro directed evolution.

Recently, the successful change of the infectivity and host specificity of high pathogenic H5N1 avian influenza suggests that the potential and practical risks of misuse of relevant researches are increasing.

Thanks to the rapid progress of high-throughput next generation sequencing, the human microbiome research has revealed that our human body is closely associated with specific microbiome or human second genome that might be highly correlated with human genetics and exogenous environment elements such as dieting. The primary results of human microbiome researches also indicate that our normal physiological functions are closely related to our second genome, whose disorder might affect normal physiological metabolism of humans and even cause illness. The strong correlation of our second genome with our physiological functions provides an alternative cryptic approach to attack human population specifically through population specific microbes, even daily dieting. The rapid development of nanomaterials and nanotechnology will also provide important tools for and approaches to efficient delivery of artificially modified and designed microbes.

3. Systematic biology

In recent years, the "x-omics" such as genomics, transcriptomics, proteomics and metabolomics have undergone great development. Systematic biology was born at the right moment. By integrating biological knowledge/information at different levels, systematic biology seeks to develop a describable, predictable mathematical model to synthesize experimental data and computational tools. The ultimate goal of systematic biology is to use the model to study the interactions of individual biological compartments. Because of the extremely large scale and complexity of "x-omics" datasets, it is still quite difficult to establish a reasonable mathematic model in the near and foreseeable future.

4. Enabling Technologies

Enabling technologies are the cornerstones of rapid progress of biological study. Communication technology will facilitate the global distribution of computing and data resources, and the capacity of fundamental research and development, promoting more rapid and cost-effective development of

biological studies. The rapid development and integration of the internet, electronic & information engineering and mobile communication will further boost global collaboration in scientific research and spread of scientific information/knowledge.

(1) High throughput system

The high-throughput system has greatly increased the speed and capacity of functional analysis via parallel sample preparation, treatment and detection. As an emerging and highly efficient research tool and support system, high-throughput technology is extensively used in many active areas, such as genomics, proteomics, systematic biology, synthetic biology. As the cornerstone of proteomics, the increasingly robust high-throughput mass spectrometry technology is widely used to quantitatively analyze protein and peptide samples, which makes it possible to detect and confirm microbes and toxins rapidly and sensitively. Mass spectrometry (MS) can also be used for high-throughput nucleic acids analysis, which is particularly useful for the detection of uncultivable microbes. Hence, the development of high-throughput MS technologies will facilitate the surveillance and diagnosis of BWC relevant agents, and forensic medicine.

(2) DNA sequencing

DNA sequencing is one of the fastest-developing fields. The second generation sequencing system can reportedly read up to 25 billion bases of DNA per day in 100 base pair read lengths. With the rapid increase in DNA sequencing capacity, the costs of DNA sequencing will be greatly reduced. With the more robust third generation sequencer on the horizon, the cost of sequencing an entire human genome is likely to be below \$1000.

The rapid development of increasingly efficient high-throughput sequencing technologies is essential for the rapid sequence determination of the pathogenic microbes' genome and environmental metagenome, which will definitely facilitate the revelation of pathogenic microbes' genome evolution and its relation with infectivity and pathogenicity and greatly enhance the surveillance, diagnosis and therapy of related infectious diseases. There is no doubt that such DNA sequence information can also be used for the modification of antigenicity, infectivity, toxicity and drug resistance of traditional pathogens, even for the artificial design and synthesis of totally new pathogens, which will lead to the failure of traditional prevention and treatment of infectious diseases and make efficient prevention and control more difficult.

(3) Computing technologies

The increasingly robust multithread supercomputers have been assembled worldwide. Some have been specially assembled for data-intensive computing in biology, such as molecule dynamic simulating to study folding and interactions of proteins and nucleic acids, the interactions of drugs and receptors.

Another means to obtain supercomputing capacity is the distributed computing system which incorporates hundreds of thousands of internet-connected PCs throughout the world to achieve the comparative capacity of supercomputers. One successful example is *folding@Home* project which combines more than five million CPUs since October 1, 2000 to obtain the capacity of the most powerful supercomputers.⁷⁴

72. On 10 December 2012, a Chinese representative submitted a working paper on international co-operation to the 2012 meeting of the States parties to the Biological Weapons Convention. The working paper introduced several main activities conducted by China in 2012:

I. Prevention of human diseases

In 2012, China's Ministry of Health continues to communicate and cooperate with the World Health Organization (WHO) and other countries on implementation of The International Health Regulation 2005 as well as the prevention and control over novel coronavirus.

In March, China's Ministry of Science and Technology (MOST) and the Bureau of Science and Technology of Singapore held the first China-Singapore joint scientific workshop on cancer, so as to promote cooperation on tumor research.

In May and July, MOST hosted two international workshops on digital medical image equipment and Ultrasonic treatment of tumor respectively in Shenyang and Chongqing, sharing the progress made by China in these areas.

In November, MOST held a training course in Beijing on prevention and diagnosis of severe diseases of Southeast Asia and Africa regions.

II. Prevention of animal epidemics

In March, China's Ministry of Agriculture dispatched an expert team to Middle East to assist the regional countries to control poultry outbreaks.

III. Plant protection

In 2012, China held several technical training courses on surveillance of rice pest and diseases, and donated relevant equipments to Vietnam and other countries.

IV. Biosafety

In 2012, MOST, together with ASEAN, continue to build the alarm, prevention and control platform against invasion of alien species, so as to prevent and slow down its process and mitigate its threats to local agriculture and forestry and ecological environment.

74 Working Paper submitted by Chinese Delegation to 2012 Meeting of Experts of BWC: The Effect/Impact of Biotechnology Progress on BWC (24 July 2012) (<http://www.china-un.ch/eng/hom/t954909.htm>).

V. Training Program for Scientists

Since 2004, the Chinese Academy of Science (CAS) and the Academy of Sciences for Developing World (TWAS) have co-hosted the CAS-TWAS program, and consistently train scholars of bioscience from developing countries. Every year, more than 10 scholars receive training in CAS's Institute of Biophysics.⁷⁵

XIV.E. Amended Protocol II to the CCW

73. On 14 November 2012, a Chinese representative made a statement at the 14th annual conference of the high contracting parties to the 1996 Amended Protocol II (AP II) to the CCW. The delegate stated as follows:

As one of the High Contracting Parties, the Chinese Government has always attached great importance to the implementation of AP II, and faithfully fulfilled its obligations. In 2012, China has allocated a great amount of human and material resources and taken effective measures in promoting the implementation of the Protocol in an earnest manner. Positive achievements have been made in this regard. The Chinese military forces continue to destroy anti-personnel mines that do not meet technical requirements of AP II and other explosive ordnance. At the same time, training and awareness-raising programmes have been implemented in accordance with provisions of the Protocol. Within the framework of routine military training and education, specific training courses for experts were carried out and workshops focusing on implementation of AP II and on destruction techniques of anti-personnel mine stockpiles were held. In addition to promoting domestic implementation of AP II, China has also actively carried out international humanitarian demining cooperation and assistance. Since 1998, China has provided more than 60 million RMB humanitarian assistance to nearly 40 countries in Asia, Africa and Latin America for clearing mines and other explosive remnants. Such assistance includes de-mining equipment donation, technical training as well as victim assistance. In 2012, China dispatched an expert team to Cambodia to carry out field training on mine clearance. China also held de-mining training courses for Sudan and the South Sudan respectively, and a total of 39 deminers were trained. In addition, China provided victim assistance to Lebanon and Lao PDR which valued 2.3 million RMB, contributing to the early reintegration of mine-affected victims.⁷⁶

75 Working Paper on International Cooperation submitted by the Chinese Delegation to the 2012 Meetings of States Parties to the Biological Weapons Convention (11 December 2012) (<http://www.china-un.ch/eng/hom/t997144.htm>).

76 Statement by the Chinese Delegation at the 14th Annual Conference of the High Contracting Parties to Amended Protocol II of CCW (14 November 2012) (<http://www.china-un.ch/eng/hom/t989879.htm>).

XIV.F. Ottawa Convention

74. On 3 December 2013, a Chinese representative made a statement at the 12th Meeting of the State Parties to the Ottawa Convention as an observer State. He said:

The Chinese Government always attaches great importance to the humanitarian concerns caused by Anti-Personnel Landmines (APLs), and supports the international efforts to address these concerns. China has not joined the Ottawa Convention due to legitimate national defense needs. However, China endorses the purposes and objectives of the Convention, and appreciates the humanitarian spirit reflected therein as well as the important role of the Convention in addressing the humanitarian concerns caused by APLs since its entry into force. In recent years, China, as an observer state, participated in the meetings of the States Parties to the Convention and other relevant activities. Since 2005, China has voted for consecutive years in favor of the UNGA resolution on the implementation of the Ottawa Convention, which demonstrates our position and attitude regarding the Convention.⁷⁷

XIV. G. Anti-vehicle landmines

75. On 15 November 2012, a Chinese representative made a statement at the meeting of the high contracting parties to the CCW. With respect to the issue of anti-vehicle landmines (AVL), he said:

In accordance with decisions by the Fourth Review Conference, an open-ended meeting of experts on the issue of Anti-Vehicle Landmines (AVL) was convened last April. We noted that there remain wide differences among states parties on how to deal with the issue. We believe that as the extent of humanitarian concerns differs, the ways and means to resolve the AVL issue should be different from those regarding anti-personal landmines. Meanwhile, national conditions should also be fully taken into account, and one-size-fits-all formula would be inappropriate. The Amended Protocol II has proper provisions on the AVL issue, which should be implemented in a comprehensive and effective manner.⁷⁸

XIV.H. International humanitarian de-mining assistance

76. In 2012, China continued to actively participate in international humanitarian de-mining assistance, helped post-conflict States to clear the remaining landmines in their

77 Statement by the Chinese Observer Delegation at the 12th Meeting of the States Parties to the Ottawa Convention (3 December 2012) (<http://www.china-un.ch/eng/hom/t995144.htm>).

78 Statement by H.E.Ambassador Wu Haitao, at the Meeting of the High Contracting Parties to the Convention on Certain Conventional Weapons (15 November 2012) (<http://www.china-un.ch/eng/hom/t989881.htm>).

territories. On 9 April 2012, China donated de-mining equipment to Serbia as part of the commitment made at the international donation conference on de-mining in Serbia in 2011. In June 2012, the Chinese government also donated assistance materials to the victims of cluster munitions to the Laotian government. On 11 July 2012, the Ministry of Foreign Affairs of China signed the Memorandum of Understanding on the Provision of Assistance of China to the Laotian Victims of Cluster Munitions with the Ministry of Foreign Affairs of Laos. In August and September 2012, twenty military officers from South Sudan attended the training sessions of international humanitarian de-mining in Nanjing Institute of Technology of the Chinese People's Liberation Army.⁷⁹

XIV. I. Protocol V to the CCW (ERW)

77. On 12 November 2012, a Chinese representative made a statement at the 6th conference of the high contracting parties to the Protocol V to the CCW. He said:

China has always attached great importance to the humanitarian concerns caused by the Explosive Remnants of War (ERW). China actively participated in relevant negotiations, and played a constructive role in the conclusion of Protocol V. In April 2010, China ratified the Protocol and became a High Contracting Party to the CCW and all its five Protocols. China has submitted its national report in accordance with the decisions of the annual conference of the CCW and Protocol V. The report introduced China's efforts in implementation of the Protocol, including clearance, removal or destruction of ERW, cooperation and assistance, and generic preventive measures. China will continue to actively promote the faithful implementation of the Protocol in a comprehensive manner. As a country affected by ERW, China fully understands the difficulties faced by other affected countries, and supports international cooperation and assistance in this regard. China always believes that in order to resolve the ERW issue in a more effective way, the principle of user's responsibilities to clearance should be observed, which will promote more responsible and restraint attitude on the use and transfer of relevant weapons by all parties. China is ready to participate, within its own capacity, in international cooperation and assistance for clearance of ERW in accordance with the Protocol.⁸⁰

79 International Humanitarian Landmine Clearance Assistance: China in Action (Guojì Rendào Zhuyì Saolei Yuánzhū: Zhōngguó zài Xīngdōng), *Liberation Army Daily* (Jiefangjun Bao), 24 October 2012 (<http://news.xinmin.cn/rollnews/2012/10/24/16842900.html>).

80 Statement by H.E. Ambassador Wu Haitao, at the 6th Conference of the High Contracting Parties to Protocol V of CCW (12 November 2012) (<http://www.china-un.ch/eng/hom/t989878.htm>).

XIV. J. China–Laos Memorandum of Understanding on the Provision of Assistance of China to the Laotian Victims of Cluster Munitions

78. On 11 July 2012, the ministries of foreign affairs of China and Laos signed the Memorandum of Understanding on the Provision of Assistance of China to the Laotian Victims of Cluster Munitions [Guanyu Zhongfang xiang Laofang Tigong Jishu Danyao Shouhaizhe Yuanzhu de Liangjie Beiwanglu]. In this Memorandum of Understanding, China solemnly undertakes to continue to support the Laotian government in clearing the landmines, cluster munitions, and other unexploded munitions in Laos.⁸¹

XIV. K. Arms Trade Treaty

79. On 9 July 2012, a Chinese representative made a statement at the general debate of the UN Conference on Arms Trade Treaty (ATT). He held that:

Firstly, the primary objective of an ATT is to prevent and combat illicit arms trade and maintain global and regional stability by regulating arms trade. Meanwhile, States' right to legal arms trade and self-defense should not be compromised.

Secondly, since legal arms trade has a direct bearing on the political, security and economic interests of all States, as well as their needs for national defense, an ATT should address the legitimate interests of States and the humanitarian concerns in a balanced manner.

Thirdly, an ATT should be universal, objective and non-discriminatory. The treaty shall not be misused for political purposes to interfere with the normal arms trade and internal affairs of any State.

Fourthly, an ATT should aim at urging States to establish their effective national regulating and control mechanism and enhance relevant capacity building on arms trade, while fully respecting the sovereign rights of all States to make their own arms trade decisions in accordance with the principles and criteria of the treaty.⁸²

80. He further highlighted China's basic stance on several important issues of the Treaty:

Regarding the scope. The scope of ATT should be defined properly by covering as a priority those conventional arms that have been clearly defined internationally and accepted universally. We have to bear in mind that the best is the enemy of

81 International Humanitarian Landmine Clearance Assistance: China in Action (Guoji Rendao Zhuyi Saolei Yuanzhu: Zhongguo zai Xingdong), *Liberation Army Daily* (Jiefangjun Bao), 24 October 2012 (<http://news.xinmin.cn/rollnews/2012/10/24/16842900.html>).

82 Statement by the Chinese Delegation at the General Debate of the United Nations Conference on the Arms Trade Treaty (http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_China_E.pdf), p. 2.

the good. It is essential to conclude an ATT for regulating the international arms trade, but it could be unhelpful to introduce too many debatable items and transactions activities into the scope for achieving an ATT as early as possible.

Regarding the criteria. Criteria are important references for States to consider in making arms trade decisions, but the States still have the sovereign rights to decide whether to give green light or not to a certain arms trade transaction. China upholds that the criteria should be objective, balanced, realistic and feasible, excluding any political, controversial or discriminatory elements.

Regarding the implementation mechanism. This mechanism should ensure the comprehensive and effective fulfillment of the Treaty, avoiding interference with States' sovereign decisions. To regulate the international arms trade, it is of great importance for all States to establish effective national regulatory mechanism and build related capacities. Cooperation among States, including establishing related mechanisms should be conducive to the above-mentioned goal. Only through this, can a future ATT be widely supported and effectively implemented.

Regarding the transparency. China is not against proper transparent measures such as establishing international register on conventional arms and sharing information on arms trade. Meanwhile, China is of the view that, as arms trade is closely linked to national security, relevant measures should strike an appropriate balance between transparency and national security. Clean-clut transparency measures may not suit all.⁸³

XIV.L. Cyber weapons

81. On 4 October 2012, a Chinese representative made a statement on cyber issues. Regarding cyber weapons, he said:

Peaceful use of cyberspace benefits the interests of every country and the common interests of mankind. We call upon all countries to observe the UN Charter and universally recognized international laws and norms governing international relations, not to take advantage of their internet technologies and resources to jeopardize the national security of other countries, not to conduct hostile activities against other countries or threaten international peace and security, and not to research, develop or use cyber weapons. States should work together to create a peaceful and secure cyberspace.⁸⁴

83 Ibid. pp. 3–4.

84 Dr. HUANG Huikang, Statement at Budapest Conference on Cyber Issues, 4 October 2012 (9 October 2012) (<http://www.chinesemission-vienna.at/eng/zgbd/t977627.htm>).

XIV.M. Conference on Disarmament

82. On 11 October 2012, a Chinese representative made a statement at the general debate of the First Committee of the 67th Session of the UNGA. Regarding the work of the Conference on Disarmament (CD), he said:

The CD had successfully concluded treaties which constitute the pillars of current multilateral arms control, disarmament and non-proliferation regimes. It has the most representative membership, with the Rules of Procedure which can fully protect the interests of the member States, as well as rich experience and necessary expertise in negotiations. The role of the CD as the sole multilateral disarmament negotiating forum is irreplaceable. The root causes for the deadlock of the CD lie in political factors. Member states should actively pursue consultations on an equal footing in the CD to seek solutions acceptable to all. At the same time, efforts should be made outside the CD to accommodate each other's legitimate security concerns, so as to create favorable atmosphere for the commencement of negotiations. Abandoning the CD is not the right way to solve the problem. Establishing new mechanisms outside the CD and removing the core agenda items, including the negotiation of FMCT, from the CD will not be able to ensure the participation of all major countries. This will not move us any closer to the treaty's objectives of nuclear disarmament and non-proliferation and will not contribute to a healthy and orderly development of the overall international arms control and disarmament process. China supports the early commencement of negotiation of FMCT as well as the launching of substantive work on other core agenda items such as prevention of an arms race in outer space, non-nuclear-weapon state security assurance and Nuclear Disarmament in the CD on the basis of a comprehensive and balanced Programme of Work. The international community should further pursue consensus in this regard.⁸⁵

XV. International criminal law

XV.A. International Criminal Court

83. A Chinese representative made a statement at 11th Session of the Assembly of State Parties to the Rome Statute as an observer State. He shared some views on the future work of the International Criminal Court (ICC) as follows:

Firstly, it is our belief that the Court shall adhere to the UN Charter. The UN Charter and the principles stipulated in it are recognized as the cornerstone of international rule of law. As part of international legal system, the Court shall comply with the Charter and those universally recognized principles, and ensure that it will not undermine the exclusive jurisdiction of the UNSC in

85 Statement by H.E. Mr. WU Haitao at the 67th Session of UNGA, above n.41.

determining the existence of a threat to the peace, a breach of the peace or an act of aggression. Secondly, the Court should perform its functions in strict conformity with the principle of complementarity. It is the sovereign state that assumes the primary responsibility to punish serious crimes and end impunity, so as to bring justice to reality. The Court is designed to subsidize, rather than substitute national jurisdictions. Consequently, choice by relevant states or regions for specific means to realize justice should be fully respected in practice. Their judicial traditions and practical needs should be well taken into consideration. In this sense, China supports the strengthening of effective national jurisdictions on serious international crimes through capacity building. Thirdly, cooperation with states need be handled in a careful way. We understand that cooperation of State parties as required by the Rome Statute is of great importance to the effective and efficient functioning of the Court, and we respect the full cooperation rendered by State parties with the Court. At the same time, we would like to reiterate that the right of non-State parties should also be fully respected in accordance with international law. Last but not the least, the Court should make its contribution to both peace and justice. As two of the core values pursued by mankind, peace and justice should reinforce and complement each other. The Chinese delegation believes that justice can not be achieved at the expense of peace. Serious crimes, as we noted, were often committed in conflict-stricken areas, and we hope the Court exercise its powers in a prudent manner without prejudice to the efforts of the international community to realize political settlement of international or regional conflicts.⁸⁶

XV.B. ICTY and ICTR

84. On 7 June 2012, a Chinese representative made a statement on the reports of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) before the UNSC. He said:

First, the relevant Security Council—resolution 1966 (2010)—requires that the two Tribunals complete their work by the end of 2014. That timeline must be complied with. My delegation is delighted to learn that the ICTR is expected to complete its work by the target date, and welcomes the substantial progress it has made in referring cases to Rwanda. As for the ICTY, its compliance with the timeline continues to face challenges. We encourage the ICTY, under President Meron's leadership, to continue to implement relevant reform measures and to further accelerate the pace of the trials of its cases. At the same time, we are pleased to note that the reform measures have already yielded initial results.

86 Statement of China at the 11th Session of the Assembly of States Parties (http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-CHN-ENG.pdf).

Secondly, international cooperation remains critically important. We welcome the continuing respective cooperation extended to the two Tribunals by Serbia, Croatia, Bosnia and Herzegovina and other States of the former Yugoslavia, as well as by the Democratic Republic of the Congo, Kenya and other countries of the Great Lakes region. We call upon those countries to cooperate with the two Tribunals on the handover of persons who have been sentenced and on the relocation of those who have been acquitted. We hope that the relevant United Nations agencies will continue to explore flexible and feasible ways to resolve the difficulties encountered by the two Tribunals relating to staff retention. Thirdly, efforts must be made to ensure the smooth transition by the two Tribunals to the Residual Mechanism. The Rwanda Branch of the Residual Mechanism will soon be operational, with the ICTY Branch to be launched next year. To ensure the timely and smooth functioning of the Residual Mechanism, the two Tribunals, the United Nations Office of Legal Affairs and the Security Council Informal Working Group on International Tribunals have already accomplished a tremendous amount of work. We hope that those bodies will continue their efforts aimed at resolving outstanding issues as soon as possible.⁸⁷

XV.C. Scope and application of universal jurisdiction

85. On 18 October 2012, a Chinese delegate made a statement on the scope and application of the principle of universal jurisdiction at the Sixth Committee of the 67th Session of the UNGA. She said:

First, universal jurisdiction and the rule of “extradite or prosecute” are two distinct concepts. The exercise of universal jurisdiction only arises in the absence of any link to the place where the crimes were committed, the nationality of any perpetrator, the nationality of the victims or the interest of that state. It is supplementary to territorial, personal and protective jurisdiction of a state. Secondly, under the current international law, states have the right to exercise universal jurisdiction over piracy on the high seas. Other than that, there are notable differences and divergences among states on whether universal jurisdiction can be applied under other circumstances. Universally recognized rules of customary international law have yet to emerge. Thirdly, states should exercise universal jurisdiction pursuant to the following conditions. A. Universal jurisdiction could only be exercised over such crimes against common interests of the international community provided for by international treaties and established by universally recognized rules of customary international law. B. Territorial, personal or protective jurisdiction should be given priority over universal jurisdiction. C. The

87 Security Council, 6782nd Meeting, New York, 7 June 2012, Doc. No. S/PV.6782 (<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Tribunals%20S%20PV%206782.pdf>), p. 24.

rule of immunity under international law, including immunity enjoyed by state, head of state and state officials, and diplomatic and consular personnel should be respected in judicial proceedings of a state. D. Fundamental principles of international law such as sovereign equality and non-interference in internal affairs should be respected. Universal jurisdiction is a comprehensive issue involving legal, political and diplomatic aspects. It is also a highly controversial issue, on which a common understanding is still far off. Clarifying the meaning of universal jurisdiction and defining the scope of and conditions for its application have an important impact on the prevention of politically-motivated abuse of universal jurisdiction and the stable and healthy development of international relations. China is in favor of establishing a working group by the Sixth Committee at this session to deliberate on the scope and application of universal jurisdiction and is willing to take an active part in its work.⁸⁸

XV.D. UN Comprehensive Convention against Terrorism

86. On 9 October 2012, a Chinese representative made a statement at the 67th Session of the UNGA on measures to eliminate international terrorism. Regarding the UN Comprehensive Convention against Terrorism, he said:

China attaches great importance to the formulation of the United Nations Comprehensive Convention against Terrorism and actively supports the work of the UN in this respect. China hopes that all sides will take a cooperative and constructive approach to the drafting of the convention, promote to seek an appropriate solution to the outstanding issues and strive for an early adoption of the convention so as to improve the international legal system against terrorism.⁸⁹

XV.E. UN Convention against Transnational Organized Crime

87. On 20 October 2012, a Chinese representative made a statement at the sixth meeting of the State parties to the UN Convention against Transnational Organized Crime. She said:

[N]ew progress has been made in implementation of the Convention in China since the meeting of State parties last year. In terms of legislation, China's legislative body adopted the Amendment VIII to the Criminal Code in February

88 Statement by Ms. Ren Xiaoxia Of the Chinese Delegation At the Sixth Committee of the 67th Session of the UN General Assembly (18 October 2012) (<http://www.china-un.org/eng/hyyfy/t980875.htm>).

89 Statement by H.E. Ambassador Wang Min Deputy Permanent Representative of China to the United Nations at the 67th Session of the UN General Assembly on Measures to Eliminate International Terrorism (9 October 2012) (<http://www.china-un.org/eng/hyyfy/t977687.htm>).

2011, which provided a more scientific definition of mafia-type crime. In order more effectively to punish the crime of human trafficking, the crime of organizing others to sell human organs was introduced and the sentence of the crime of forced labour was extended in the Criminal Code. In order to facilitate the co-operation in confiscation and return of criminal assets under the Convention, the Criminal Procedural Code was amended in March 2012. According to the amended Code, criminal profits may be confiscated in the case where the suspect or defendant of the corruption crimes or terrorism crimes flees or dies. The Chinese government has carried out various and effective international co-operation with the State parties to the Convention. As of this September, China has concluded 112 treaties on judicial assistance, extradition and transfer of those convicted with 58 States. China also actively establishes bilateral co-operative judicial and execution mechanisms with the USA and Canada so as to jointly repress transnational crimes. From 2003 to 2012, China has lodged 40 requests of judicial assistance to foreign States in accordance with the Convention. The co-operation with foreign States in the repression of transnational crimes has been very successful. Through co-operation with foreign States in investigation and execution, China has successfully cracked down on a series of transnational telecommunication fraud cases, transnational trafficking of drugs, and brought over 100 suspects to justice. The Chinese government sincerely implements the protocol to human trafficking, in particular of women and children, takes full advantage of bilateral and multi-lateral co-operation platforms, actively participates in the co-operation program against human trafficking in the Sub-region of Mekong River, strengthens communication and co-operation with the neighbouring States, in particular Viet Nam and Myanmar, successfully cracks down on a series of transnational human trafficking cases. The Chinese government is preparing a second national program against human trafficking to be implemented in 2013–2017 ... The Convention made full provisions on extradition, judicial assistance and confiscation, which provide the legal basis for co-operation among the States. However, in practice, the co-operation on the basis of the Convention is influenced and restricted by the discrepancies among legal systems and non-legal factors. For instance, several States do not consider the Convention a legal basis for extradition and do not actively conclude extradition treaties with foreign States, thus making co-operation impossible. The Chinese government calls upon all State parties to take a more active, flexible and practical stand in revising domestic laws or concluding bilateral extradition treaties in order effectively to implement the Convention and facilitate international co-operation in fighting against transnational crimes in order to achieve more fruitful results under the framework of the Convention ... Establishing an effective and widely supported review system on performance of the obligations under the Convention is helpful to

improving the implementation. Such a mechanism shall be based on the government-dominated process, it shall be aimed at furthering international co-operation and it shall comply with the sovereign equality and non-interference. In order to ensure that the mechanism operates smoothly and healthily and reduce the uncertainty of contribution, it is necessary for the UN to contribute from the budget so as to ensure the stability and neutrality of the contribution. Technical assistance is an important condition for the implementation of the Convention. In order to raise the capacity of implementation of State parties, the Chinese delegation considers that, in discussing the designing of the State strategy on fighting against transnational organized crime, it is necessary to respect the autonomy of each State in designing such strategies based on national conditions, and that the assistance shall be given to the need of the developing countries, on the building of capacity of developing countries and no conditions shall be placed on such assistance. Over the past two years, China has conducted some technical assistance and training work, and will provide technical assistance within the available capacity, and looks forward to communicating with other States in this field. China is willing to actively discuss and communicate with foreign States under the Convention, and jointly deal with challenges posed by new transnational crimes. Regarding cyber-crimes, the Chinese government supports the UN expert group on cyber-crimes to help it accomplish its work as soon as possible, and to draft a convention on cyber-crimes within the framework of the UN. Regarding crimes against cultural property, China calls upon all State parties to the Convention to strengthen international co-operation in protection of cultural property on basis of the Convention. The Chinese delegation considers that it is very important to make guidelines on prevention of crimes against cultural property, and welcomes the technical assistance group and international co-operation group to jointly discuss this issue. It is suggested that the draft and review of the guidelines draft be sped up ...⁹⁰

XV.F. UN Convention against Corruption

88. On 10 October 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA. Regarding the UN Convention against Corruption, he said:

90 Statement of the Chinese representative at the sixth meeting of the State parties to the UN Convention against Transnational Organized Crime (20 October 2012) (<http://www.chinesemission-vienna.at/chn/hyfy/t981236.htm>), translated by the authors. See also Statement by Mr. AO Shan of the Chinese Delegation at the Third Committee of the 67th Session of the General Assembly (10 October 2012) (<http://www.china-un.org/eng/hyfy/t978234.htm>).

The United Nations Convention against Corruption is an important achievement of the concerted international fight against corruption. The Convention offers a main avenue to channel our fight against corruption and should therefore be fully utilized. In particular, efforts are needed to promote the effective implementation of the Convention provisions related to asset recovery and international cooperation.⁹¹

XV.G. Cyber-crime

89. On 10 October 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA. Regarding cyber-crime, he said:

We believe that a comprehensive convention on cyber crime within the UN framework will be an effective tool to deal with the threat of such crimes on a global level. We support the continued research by the UN Intergovernmental Experts Group on Cyber Crime and hope that it will soon complete its mandate. At the same time, in response to cyber crime and cyber security, China and Russia have been working to promote the establishment of the International Codes of Conduct on Information Security. We hope that our efforts will continue to receive active response and support from other member states.⁹²

XV.H. Trafficking in cultural property

90. On 10 October 2012, a Chinese representative made a statement at the Third Committee of the 67th Session of the UNGA. Regarding trafficking in cultural property, he said:

Destination countries must take effective measures in terms of import control, market regulation, judicial assistance and return of cultural objects. They should also take seriously the claims of countries of origin and strengthen cooperation with them in order to combat more effectively transnational crimes targeting cultural property.⁹³

XVI. International environmental law

XVI.A. Joint Declaration of the Moscow Meeting on Inclusion of International Civil Aviation in the EU-ETS

91. On 21-22 February 2012, a Chinese representative attended the meeting on inclusion of international civil aviation in the EU emissions trading system (EU-ETS) in

91 Statement by Mr. AO Shan, above n.90.

92 Ibid.

93 Ibid.

Moscow and made a joint declaration with other 22 States on this issue. The full text of the Moscow Declaration is as follows.

Joint Declaration of the Moscow Meeting on Inclusion of International Civil Aviation in the EU-ETS

Considering that the inclusion of international civil aviation in the EU-ETS leads to serious market distortions and unfair competition.

Representatives of Armenia, Argentina, Republic of Belarus, Brazil, Cameroon, Chile, China, Cuba, Guatemala, India, Japan, Republic of Korea, Mexico, Nigeria, Paraguay, Russian Federation, Saudi Arabia, Seychelles, Singapore, South Africa, Thailand, Uganda and United States of America, gathered in Moscow, on the 21st and 22nd February 2012,

Recalling the Delhi Joint Declaration, adopted by the Council of ICAO on November 2nd, 2011 according to C-DEC 194/2;

Recalling the relevant provisions of the United Nations Framework Convention on Climate Change (UNFCCC);

Stressing the importance of the Kyoto Protocol to its Parties;

Reiterating the importance of the Chicago Convention and the need to ensure full compliance with its provisions;

Keeping in mind their national laws and regulations;

Affirming the importance of the role of the International Civil Aviation Organization (ICAO) in addressing international civil aviation emissions, including pursuant to the request from the Parties to the UNFCCC;

Stressing that the unilateral inclusion of international civil aviation in the EU-ETS has constituted an obstacle to the progress of ICAO's work underway to address international civil aviation emissions;

Underlining the lack of an adequate response from EU Member States to the ICAO Council's Decision C-DEC 194/2, including the lack of a constructive dialogue to address the concerns of the non-EU States expressed in that decision and elsewhere;

Considering that the inclusion of international civil aviation in the EU-ETS leads to serious market distortions and unfair competition;

Decided to:

a) Adopt this Joint Declaration as a clear manifestation of their unanimous position that the EU and its Member States must cease application of the Directive 2008/101/EC to airlines/ aircraft operators registered in third States;

b) Strongly urge the EU Member States to work constructively forthwith in ICAO on a multilateral approach to address international civil aviation emissions;

c) Consider taking actions/ measures set forth in Attachment A to this Joint Declaration including, for example, a proceeding under Article 84 of the Chicago Convention and barring participation by their respective airlines/ aircraft operators in the EU ETS;

d) Exchange information on the measures adopted and to be adopted, particularly to ensure better coordination, by each non-EU Member State after this Meeting in future;

e) Continue their intensified common efforts to make progress at ICAO to address international civil aviation emissions;

f) Request the Russian Federation, on their behalf, to communicate this Joint Declaration to the EU and its Member States; and

g) Invite any other State to associate itself with this Joint Declaration and, in this connection, request the Russian Federation to extend this invitation.

Attachment A to the Moscow Joint Declaration

Basket of ACTIONS/ MEASURES

(1) Filing an application under Article 84 of the Chicago Convention for resolution of the dispute according to the ICAO Rules for the Settlement of Differences (Doc 7782/2);

(2) Using existing or new State legislation, regulations, or other legal mechanism to prohibit airlines/aircraft operators of that State from participating in the EU ETS;

(3) Holding meetings with the EU carriers and/or aviation-related enterprises in their respective States and apprise them about the concerns arising out of the EU-ETS and the possibility of reciprocal measures that could be adopted by the State, which may adversely affect those airlines and/or entities;

(4) Mandating EU carriers to submit flight details and other data;

(5) Assessing whether the EU ETS is consistent with the WTO Agreements and taking appropriate action;

(6) Reviewing Bilateral Air Services Agreements, including Open Skies with individual EU Member States, and reconsidering the implementation or negotiation of the “Horizontal Agreement” with the EU;

(7) Suspending current and future discussions and/or negotiations to enhance operating rights for EU airlines/aircraft operators;

(8) Imposing additional levies/charges on EU carriers/ aircraft operators as a form of countermeasure;

(9) Any other actions/measures.⁹⁴

XVI.B. Directive on Prohibition from Participating in EU Carbon Emission System

92. According to the authorization of the State Council, the Civil Aviation Administration of China issued directives to all Chinese airlines. According to the directive, all

⁹⁴ Joint declaration of the Moscow meeting on inclusion of international civil aviation in the Eu-ETS, Russian Aviation.com (22 February 2012) (<http://www.ruaviation.com/docs/1/2012/2/22/50/>).

airlines within the territory of China are prohibited from participating in the EU carbon emission system and from raising the price of transportation or add charge items without the approval of the relevant bodies of the government. The unilateral incorporation of the emission of greenhouse gases by airlines entering and exiting EU into the EU carbon emission system through legislation has violated the UN Convention on Framework of Climate Change and the relevant principles and provisions of the ICAO. Prior to this directive, through bilateral and multi-lateral channels, China had lodged with the EU its concerns to the EU legislation, and proposed to settle the problem of international aviation emission within the multi-lateral framework of ICAO.⁹⁵

XVI.C. Protection of atmosphere

93. On 2 November 2012, a Chinese representative made a statement on the Report of the International Law Commission on the work of its 63rd and 64th sessions at the 19th meeting of the Sixth Committee of the 67th Session of the UNGA. Regarding the topic of protection of atmosphere, the summary record shows her statement as follows

52. Like other delegations, it did not support consideration of the topic “Protection of the atmosphere”, which was both too general and too technical for examination by the Commission. Issues such as the delimitation between the atmosphere and outer space had been discussed by the Committee on the Peaceful Uses of Outer Space for several decades but remained unresolved. That being the case, the topic was not suitable for codification or progressive development. Even if the Commission managed to produce a set of draft articles, they were unlikely to be of any guiding value or practical use to the international community. Moreover, the topic was already being effectively addressed to some extent under various conventions and agreements, including the Vienna Convention for the Protection of the Ozone Layer. Her delegation therefore maintained that the topic should not be included on the Commission’s agenda for the time being, although the Commission might, as a first step, create a study group on the matter and then decide how to proceed on the basis of the group’s report.⁹⁶

XVI.D. Effects of atomic radiation

94. On 5 November 2012, a Chinese representative made a statement at the 67th Session of UNGA on the Agenda Item: “Report of the International Atomic Energy Agency”. In his introduction, he said:

95 Chinese government forbids the Chinese-registered airlines from participating in the EU carbon emission trading system (6 February 2012) (http://www.caac.gov.cn/A1/201202/t20120206_45737.html), summarized by the authors.

96 A/C.6/67/SR.19, above n.4, para.52.

In the course of nuclear energy development, China always adheres to the principle of “safety first”. We have established a comprehensive legal and standards system and supervision framework on nuclear safety, and will continue to improve them. We have strengthened management of nuclear safety and emergency response, stepped up efforts in personnel training and technology research and development, and kept a good track record in nuclear safety. To further enhance nuclear safety, China has supported and taken an active part in relevant international and regional exchanges and cooperation, and worked vigorously to introduce and apply advanced nuclear power technologies. China also attaches great importance to nuclear security capacity building, and supports and actively participates in relevant international cooperation. In March 2012, President Hu Jintao attended the Seoul Nuclear Security Summit, where he expounded China’s policy and measures on nuclear security issues in a comprehensive manner. China has played a constructive role in ensuring the success of the Summit, and made great contribution to promoting the international cooperation in nuclear security. At present, the construction of the Center of Excellence on Nuclear Security in China in cooperation with relevant countries is going on in an orderly fashion. China will make endeavors to build the Center into a regional center of excellence, and cooperate and interconnect with other centers to uplift nuclear security level in the region. In addition, China supports the leading role of the Agency in the field of nuclear security, and will continue to offer contributions to the Nuclear Security Fund ...⁹⁷

XVI.E. Use of water resources of cross-border rivers

95. On 2 March 2012, an FM spokesperson made a statement on China’s position on use of water resources of cross-border rivers. He said:

When it comes to the development of cross-border rivers, the Chinese Government upholds the policy of fairness and equity that puts people first, places equal importance on development and protection and takes into consideration the interests of both the upstream and the downstream countries. Generally speaking, the degree of China’s development and utilization of China-India cross-border rivers is very low, with the water resources development ratio of the Yarlung Zangbo River less than 1%. In order to satisfy the

97 Statement by Ambassador Wang Min at the 67th Session of UN General Assembly on the Agenda Item “Report of the International Atomic Energy Agency” (5 November 2012) (<http://www.china-un.org/eng/hyyfy/t985556.htm>). See also China’s Statement by Dr. Zhao Xinli, Counselor of the Chinese Mission to the United Nations at the 4th Committee of the 67th Session of the General Assembly on Item 50: Effects of Atomic Radiation (13 November 2012) (<http://www.china-un.org/eng/hyyfy/t988599.htm>).

power demands of the Tibetan Autonomous Region, China began the construction of the Zangmu hydropower station on the middle part of the Yarlung Zangbo River in 2010. With a moderate installed capacity, the hydropower station does not have regulation or storage functions. Thus it will neither cause big fluctuations of downstream flow nor impair flood prevention and disaster reduction or the ecosystem of the downstream area. The Indian side expressed understanding after China briefed it about the situation.⁹⁸

XVII. Law on diplomatic and consular relations

XVII.A. Vienna Convention on Diplomatic Relations

96. On 7 February 2012, an FM spokesperson made a statement on the assault by protesters against the Chinese Embassy in Libya. He said:

China has expressed strong concerns over the assault against the Chinese Embassy in Libya and lodged representations to the Libyan side. In accordance with the *Vienna Convention on Diplomatic Relations* and other relevant international law, the receiving state has the duty to ensure the inviolability of personnel and property of diplomatic missions of the sending state. We urge the Libyan side to take concrete and effective measures to prevent any recurrence of such incidents and ensure the safety of Chinese personnel and institutions in Libya.⁹⁹

XVII.B. The CHEN Guangcheng incident

97. On 2 May 2012, an FM spokesperson made a statement on CHEN Guangcheng's entering the US Embassy in China. Mr. Chen is a Chinese citizen living in Yinan County, Shandong Province. He said:

The US Embassy in China took Chen Guangcheng, a Chinese citizen, into the Embassy via abnormal means, with which China expresses strong dissatisfaction. The US move is an interference in China's internal affairs, which is completely unacceptable to China. The US Embassy in China has the obligation to abide by relevant international laws and Chinese laws, and should not engage in activities irrelevant to its duties. China demands the US to apologize for that, carry out a

98 Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on March 2, 2012 (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t911417.shtml>).

99 Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on February 7, 2012 (8 February 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t903639.shtml>). See also FM Spokesperson's statement on the death of US Ambassador to Libya (12 September 2012) (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t971547.shtml>).

thorough investigation into the incident, deal with those responsible, and promise not to let similar incidents happen again ...¹⁰⁰

XVII.C. The *WANG Lijun* case

98. On 17–18 September 2012, the Intermediate People’s Court of Chengdu, Capital of Sichuan Province held a trial of Mr. WANG Lijun, former Vice Mayor and Chief of the Public Security Bureau of Chongqing, one of the four municipalities directly under the State Council. Among others, he was charged with the crime of defection under article 109 of the Chinese Criminal Code as he fled into the Consulate General of the USA in Chengdu on 6 February 2012 and stayed there for one day. On 24 September 2012, he was convicted of the crime of defection, as well as other crimes, including the crime of bending the law for selfish ends or twisting the law for favours, the crime of abusing powers and the crime of taking bribery. He was then sentenced to 15 years of imprisonment. Mr. Wang did not lodge an appeal.¹⁰¹ It is worth noting that article 109 of the Chinese Criminal Code provides that “any State functionary who, while discharging his official duties at home or abroad, leaves his post without permission and defects to another country, which endangers the security of the People’s Republic of China, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years”. In other words, one of the elements for the crime of defection is that the defendant must have defected to “another country”. It thus seems that the Court has considered the Consulate General of the USA in Chengdu as equivalent to “another country” within the meaning of article 109 of the Chinese Criminal Code.

XVIII. International law on international organizations

XVIII.A. The reform of the UNSC

99. Regarding the reform of the UNSC, the Chinese position paper at the 67th Session of the UNGA points out that:

The priority of the Security Council reform should be on increasing the representation of developing countries, especially African countries, in the Security Council so that small and medium-sized countries will have more opportunities to sit on the Security Council in turns, participate in its decision-making, and play a bigger role in the Security Council. This is in the fundamental interests

100 <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t928382.shtml>.

101 Wang Lijun has been prosecuted before the Chengdu Intermediate People’s Court, Xinhua News Agency, News.CN (5 September 2012) (http://news.xinhuanet.com/legal/2012-09/05/c_112974386.htm).

of small and medium-sized countries which make up the majority of UN member states. Given the broad agenda of the Security Council reform, it is important to continue with democratic and patient consultations to accommodate the interests and concerns of all parties, seek a package solution and reach the broadest possible agreement. The “step-by-step” or “piecemeal” approach will lead us nowhere and will only ruin the atmosphere of democratic consultations for reform ...¹⁰²

XVIII.B. Sanctions imposed by the UNSC

100. On 11 October 2012, the Sixth Committee of the 66th Session of the UNGA addressed Item 82 (Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization) in its seventh meeting. A representative of China made a statement in the meeting. The summary record said:

58. Ms. REN Xiaoxia (China) said that at its next session the Special Committee should continue to give priority to considering the impact and implementation of sanctions and the question of assistance to affected third States. In her delegation's view, the Security Council should continue to exert caution in applying sanctions, doing its utmost to avoid any negative impact on third States and civilians and to ensure that any sanctions that were deemed necessary were implemented in compliance with the Charter and international law. Her delegation was open to new proposals, provided that they were realistic, feasible and in line with the Special Committee's mandate. Despite its achievements, it was inefficient, and she hoped that the Member States could work together pragmatically to reach agreement on widely acceptable efficiency measures. As a contributor to the relevant trust funds, China appreciated the Secretariat's work on the *Repertory* and *Repertoire* and hoped that its continued efforts would allow it to achieve the goals set out in the Special Committee's report.¹⁰³

XVIII.C. The working methods of the UNSC

101. On 26 November 2012, a Chinese representative made a statement at the UNSC open debate on the working methods of the Security Council. He highlighted the following points on this issue:

First, over recent years, the workload of the Council has increased continuously. The Council should focus on using its existing resources effectively and on

102 Position Paper, above n.63

103 GA, 67th Session, 6th Committee, Summary record of the 7th meeting, Doc. No. A/C.6/67/SR.7, para.58 (<http://unispal.un.org/UNISPAL.NSF/0/0B36458FBA7EB2E985257B4100511A00>).

dealing with major, urgent issues that threaten international peace and security. The number of thematic subjects it addresses has also been increasing continuously. Some of them are beyond the scope of the mandate of the Security Council, and the Council should pay attention to the concern expressed by Member States in that regard. Secondly, the Security Council should pay more attention to preventive diplomacy and use peaceful means such as mediation and good offices to defuse disputes and should avoid the frequent use or threat of sanctions and other measures of force. An effective mechanism to monitor the implementation of the Council's mandates should be established so as to avoid acts that abuse or overstep them. Thirdly, before adopting resolutions or agreeing on presidential statements, the Council should carry out, in a full and patient manner, negotiations and consultations so as to reach extensive and broad consensus. In that process, it is important that all Council members be given adequate time to consider and study texts. The Council should avoid forcing through texts over which there remain serious differences, so as to safeguard the solidarity of the Council. Fourthly, the Security Council should continue to strengthen its interaction and dialogue with non-Council members and pay more attention to the opinions of relevant Member States that are connected to the Council's agenda. We support the full utilization by the Council of various mechanisms such as the Working Group on Peacekeeping Operations and meetings with troop-contributing countries (TCCs). With regard to deploying peacekeeping operations and adjusting their mandates, more attention should be given to communication between TCCs and the Secretariat. Fifthly, the Security Council, the General Assembly and the Peace building Commission should fully respect the division of labour, on the one hand, and strengthen the communication and coordination among them, on the other. China supports the Council's efforts in accordance with Chapter VIII of the Charter to strengthen its cooperation with regional organizations such as the African Union and the League of Arab States so as to achieve synergy.¹⁰⁴

XVIII.D. UN peacekeeping operations

102. Regarding UN peacekeeping operations, the Chinese position paper at the 67th Session of the UNGA points out:

China maintains that in conducting peacekeeping operations, it is important to strictly abide by and carry out the mandate of relevant Security Council resolutions, adhere to the three principles of "consent of the parties, impartiality and non-use of force except in self-defense" put forward by former UN Secretary-General Dag Hammarskjöld, respect the will and choice of the host

104 <http://www.china-un.org/eng/hyyfy/t993924.htm>.

country, strengthen operation planning, set out clear priorities, and coordinate actions to form synergy. There should be better coordination between peacekeeping, peacemaking and peacebuilding. The UN should place greater emphasis on enhancing cooperation with regional and sub-regional organizations, and pay more attention to the needs of African countries in its peacekeeping operations.

China attaches importance to and actively participates in UN peacekeeping operations. To date, China has sent over 20,000 military personnel, policemen and civilian officials to UN peacekeeping operations. At present, there are nearly 2,000 Chinese peacekeepers on duty, making China a leading peacekeeper contributor among the five permanent members of the Security Council and the 16th largest troop-contributing country in the world.¹⁰⁵

XVIII.E. Regulation on Participation of People's Liberation Army in UN Peacekeeping Operations (Provisional Application)

103. On 22 March 2012, the CMC, China's top military organ, adopted the Regulation on Participation of People's Liberation Army in UN Peacekeeping Operations (Provisional Application) [Zhongguo Renmin Jiefangjun Canjia Lianheguo Weichi Heping Xingdong Tiaoli (Shixing)].¹⁰⁶ The Regulation is the first special military measure to regulate the participation of the Chinese army in UN peacekeeping operations. It consists of seven chapters and 37 articles, mainly covering the following aspects. Firstly, it defines the scope of peacekeeping operations. Based on the Chinese foreign policy and principles of participation in peacekeeping operations, the Regulation limits the peacekeeping operations in which the Chinese army participates to those within the framework of the UN, stresses the authority of the UNSC and the dominance of the UN and clarifies that peacekeeping operations in which the Chinese army participates are mainly responsible for such tasks as separating parties to a conflict, supervising armistice, engineering, transportation, medical guarantee, as well as rescue and relief. Secondly, it provides for the organization and command of peacekeeping operations. The Regulation clearly provides that the participation of Chinese army in peacekeeping operations must be under the uniform command of the CMC, and be planned and guided by the Headquarters, and that every military region and arms and services must be responsible for their corresponding works according to their duties and division of labour among them. Thirdly, it provides for the dispatch and withdrawal of peacekeeping operations.

105 Position Paper, above n.63.

106 The President of the CMC, Mr. Hu Jintao, ordered to implement the Regulation on Participation of People's Liberation Army in UN Peacekeeping Operations (Provisional Application), People's Liberation Army Newspaper, China Mail (23 March 2012) (http://www.chinamil.com.cn/jfjbmap/content/2012-03/23/content_1121.htm).

The Regulation clarifies the procedure for approval of dispatching troops to participate in peacekeeping operations. It also regulates the formation of troops, selection of members, deployment of troops and organization and implementation of rotation during the period from dispatch to withdrawal. Fourthly, it provides for education and training of peacekeepers. The Regulation provides for education and training of peacekeepers in terms of ideological and political education, troops training, military professional personnel training, joint training with foreign troops and check and examination. Fifthly, it provides for management and guarantee of peacekeeping operations. The Regulation clarifies the guarantee duties of every department in peacekeeping operations in accordance with the current provisions relating to logistics and equipment guarantee. Finally, it also clarifies disciplines, weapons, uniforms, promotion and remuneration.¹⁰⁷

XVIII.F. Inter-mission co-operation of UN peacekeeping operations

104. On 12 December 2012, a Chinese representative made a statement at the UNSC on inter-mission co-operation of the UN Peacekeeping Operations. She said:

First, China is in favour of international cooperation according to the situation on the ground and as required by a specific operation. However, specific authorization should be obtained for such cooperation from the Council beforehand, and it should abide by the fundamental principles governing peacekeeping operations, especially that of the consent of the host country. Secondly, in order to strengthen inter-mission cooperation, it is important first and foremost to ensure that the individual mandates are being effectively implemented. The Secretariat, in preparing for inter-mission cooperation, should first conduct a comprehensive assessment of the situation on the ground and carry out reasonable conceptual and planning activities. The purpose of inter-mission cooperation is to more effectively implement Council mandates. It is therefore necessary to avoid a situation where the capacity of an individual peacekeeping mission is negatively affected as a result of such cooperation. Thirdly, it is important to ensure that each peacekeeping operation receives adequate financial support and, at the same time, efforts should be made to achieve the optimal use of resources through proper cooperation among different missions. China is in favour of the efforts by the Department for Field Support to continue to implement global field support strategy and to consolidate resources among different missions in a timely and effective manner so as to make optimal use of the limited resources for peacekeeping. Fourthly, in the course of inter-mission cooperation, the Secretariat should strengthen integrated coordination so as to ensure that there is a seamless connection and transfer among the various parties and between

107 Answers to the questions raised by the correspondents, Office of Peacekeeping Affairs, Ministry of National Defense (17 May 2012) (http://chn.chinamil.com.cn/wh/2012-05/17/content_4864442_2.htm), summarized by the authors.

the various steps. It is equally important to seek the views of troop-contributing countries in a timely manner and to strengthen contacts and communication with them. With regard to specific developments of inter-mission cooperation, the Secretariat should keep the Council informed in a timely manner.¹⁰⁸

XVIII.G. Scale of assessments for the apportionment of the expenses of the UN

105. On 5 October 2012, a Chinese representative made a statement at the Fifth Committee on Agenda Item 134: Scale of Assessments for the Apportionment of the Expenses of the UN. He made the following observations.

First, the scale of assessments of the U.N. must be formulated strictly in accordance with the principle of capacity to pay, which is a fundamental principle explicitly set out in the Rules of Procedure of the General Assembly ever since the inception of the U.N., and has all along been reaffirmed by relevant GA resolutions. The discussion of the scale of assessments in the Fifth Committee should follow the Rules of Procedure of the General Assembly and provisions of GA resolutions, and safeguard the authority and efficacy of such rules and resolutions. Proposals and ideas put forward by member states should also be in line with this principle. Secondly, measurement of a country's capacity to pay requires a comprehensive and integrated perspective which takes into account both the gross national income and more importantly the per capita income of the country. While the former is the basis, it is the latter that is the decisive factor. Given the differences among countries in terms of size, development stage, level of economic development and wealth owned by nationals, it is only natural that different countries have different capacities to pay. With developing countries constrained by weak economic foundation and the onerous task of poverty eradication, it's fair to say that they are leagues behind developed countries in terms of overall living standards and quality of life of nationals. Ignoring per capita income and simply using gross national income to measure the actual capacity to pay of developing countries is partial and unfair. Thirdly, the application of the principle of capacity-to-pay necessitates the consistent application of low per capita income adjustment to all qualified member states and the impermissibility of discriminatory practices. Universal application of "low per capita income adjustment" has invariably been the consistent practice in determining the assessment rates for member states since the very beginning. Adjustment threshold and per capita income remain the only criteria for determining whether a member state is qualified for "low per capita income adjustment", and no other factors should be included. It is the logical requirement and

108 Counselor Guo Xiaomei's Remarks at the Security Council Meeting on UN Peacekeeping Operations (12 December 2012) (<http://www.china-un.org/eng/hyyfy/t998334.htm>).

innate nature of “low per capita income adjustment” that the same adjustment rate be applied to all qualified member states. The existing formula of “low per capita income adjustment” has already solved the problem of granting different adjustments to countries with different levels of low per capita income. Such proposals as “multiple adjustment rates” or putting an artificial ceiling on adjustment are in essence subversion of the “low per capita income adjustment” element. Fourthly, the scale methodology of the U.N. should remain relatively stable and avoid frequent and drastic adjustments. The current methodology is the result of long and hard negotiations and full consultations among all member states. It is a consensus based on the principle of capacity to pay that has taken into consideration various factors and accommodated positions of all sides. It works to ensure stability in the scale methodology and predictability of the assessment rates and reduce uncertainties to a minimum. As such, it is conducive to maintaining a stable and sound fiscal foundation for the U.N., and is of great importance to the normal functioning of the organization. Since 2001, the current methodology has been applied for four scale cycles, during which the global economy has undergone tremendous changes. Practice has shown that though it is not perfect, the current methodology can adequately reflect the evolvement of the economic situation of member states as well as the principle of capacity to pay. It therefore remains an effective methodology and is in the interest of the general membership.¹⁰⁹

106. Regarding China’s assessment rate, he said:

[A]ccording to the current methodology, China’s assessment rate may experience another significant increase in the coming three years, with the actual amount of increase one of the biggest among all member states. With the Chinese economy severely affected by the global financial crisis and the ensuing European debt crisis, such a big increase will undoubtedly constitute a heavy burden for China. Here I would like to emphasize that despite its relatively fast economic growth and significant total volume of economy, China remains a developing country. It has a huge population with a tremendous number of people living in poverty and its economic development is very uneven. These are indisputable facts of China’s national situation. Evaluating China’s capacity to pay should be done in an objective and reasonable way and should not be separated from China’s national conditions and the overall international economic environment.¹¹⁰

109 Statement by Ambassador Wang Min, Deputy Permanent Representative of China to the U.N. at the Fifth Committee of the 67th Session of the UNGA on Agenda Item 134: Scale of Assessments for the Apportionment of the Expenses of the UN (5 October 2012) (<http://www.china-un.org/eng/gdxw/t976954.htm>).

110 Ibid.

XIX. International law on settlement of disputes

XIX.A. International Court of Justice

107. In the Chinese Position Paper at the 67th Session of the UNGA, the issue of the International Court of Justice was also mentioned. The Position Paper stated that “China consistently supports the peaceful settlement of international disputes and respects the right of each country to independently choose the method of peaceful settlement of disputes”.¹¹¹

XIX.B. Unilateral sanctions imposed by a State against another State

108. On 13 November 2012, a Chinese representative made a statement on Agenda Item 41: “Necessity of ending the economic, commercial and financial embargo imposed by the US against Cuba”. He said:

The Chinese government has always believed that countries should develop mutual relations on the basis of upholding the purposes and principles of the UN Charter and respecting the rights of other countries to independently choose their own social system and development path. China is opposed to any unilateral sanctions against other countries by military, political, economic or other means ...¹¹²

111 Position Paper, above n.63.

112 Statement by Ambassador Wang Min, Deputy Permanent Representative of the People’s Republic of China at the 67th Session of the UN General Assembly on Agenda Item 41 “Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba” (13 November 2012) (<http://www.china-un.org/eng/hyyfy/t988577.htm>).