

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 18, 2015
CORRESPONDENTS' REPORTS

CHINA¹

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Treaties and Agreements

☛ Ratification of *Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia*

On 24 April 2015, the 14th Session of the Standing Committee of the 12th National People's Congress decided to ratify the *Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia*, which was signed by Mr Liu Jieyi, China's Permanent Representative to the United Nations in New York on 6 May 2014. The decision was attached a statement, which reads:

[A]ny security agreement or treaty shall not affect the status of nuclear-weapon-free zone; the interpretation and application of each article of the Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia shall comply with the objective and purpose to support the establishment of a nuclear-weapon-free zone in Central Asia in the Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia.²

☛ Signature of *China-US Military Crisis Notification Mechanism*, and *Rules of Behavior for Safety of Air-to-Air Encounters* and *Newly Added Terms of Reference for Air-to-Air Encounters*

On 15 and 18 September 2015, the representatives of China's Ministry of National Defense and US Department of Defense signed the *Military Crisis Notification Mechanism*, which is an integral part of the overall *Memorandum of Understanding Between the United States of America Department of Defense and the People's Republic of China Ministry of National Defense on Notification of Major Military Activities Confidence-Building Measures Mechanism*, and the *Rules of Behavior for Safety of Air-to-Air Encounters* and *Newly Added Terms of Reference for Air-to-Air Encounters for Inclusion* in Annex I of the *Memorandum of Understanding Regarding the Rules of Behavior for Safety of Air and Maritime Encounters* in Beijing and Washington respectively. The latter *Memorandum of Understanding* was signed by the China's Ministry of National Defense and US Department of Defense on 10 November 2014 and jointly announced by Chinese President Xi Jinping and US President Barack Obama on 12 November 2014.³

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² The statement was translated by the author. See <http://www.npc.gov.cn/wxzl/gongbao/2015-07/06/content_1942847.htm>.

³ See <http://www.mod.gov.cn/info/2015-09/24/content_4625966.htm>. The full text of the Mechanism in English is available at: <http://www.defense.gov/Portals/1/Documents/pubs/US-CHINA_CRISIS_COMMUNICATIONS_ANNEX_SEP_2015.pdf>, and the full text of the Rules of Behavior and the Newly Added Terms of Reference in English is available at: <<http://www.defense.gov/Portals/1/Documents/pubs/US->

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Legislations

• *National Security Act*

On 1 July 2015, the 15th Session of the Standing Committee of the 12th National People's Congress adopted the National Security Act of the People's Republic of China [《中□人民共和国国家安全法》].

Chapter I General Provisions

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Article 2: National security means that the state regime, sovereignty, unity and territorial integrity, people's welfare, sustainable development of the economy and society and State's other vital interests are relatively free from danger and internal or external threats, and [that the State has] the capacity to guarantee a sustainable security situation.

...

Article 10: The protection of national security shall observe mutual trust, mutual benefit, equality, coordination. [It shall] actively conduct security communication and cooperation with foreign governments and international organizations; perform international security obligations; promote common security; and safeguard world peace.

...

Chapter II Task of Safeguarding National Security

...

Article 17: The State shall strengthen the construction of frontier defence, maritime defence and space defence; take all necessary defence and control measures; protect security of territorial land, internal waters, territorial sea and territorial space, and safeguard the nation's territorial sovereignty and maritime rights and interests.

Article 18: The State shall strengthen the construction of revolutionization, modernization and standardization of the armed forces; build up an armed force which is adaptive to the needs of the defence of the national security and development interests; carry out, according to the military strategic guidelines, active defence; prevent and resist aggression, suppress armed subversion and division; conduct international military security cooperation, carry out military operations relating to United Nations peacekeeping, international rescue, maritime escort, and safeguard national overseas interests; safeguard state sovereignty, security, territorial integrity, development interests, and world peace.

...

Article 25: The State shall build up a system for safeguarding the internet and information security; improve the capacity to protect the internet and information security; strengthen innovative research and development applications for the internet and information technology; realise the security and control of the internet, core information technology, key infrastructure, information systems and the data of significant fields; strengthen internet management, prevent, stop and suppress internet crimes, such as cyber attacks, cyber intrusion, cyber secret-stealing, and the spread of illegal and harmful information; [and] safeguard state sovereignty, security and development interests in cyber space.

CHINA_AIR_ENCOUNTERS_ANNEX_SEP_2015.pdf>.

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...

Article 28: The State opposes any form of terrorism and extremism, and shall strengthen capacity building for the prevention of, and response to, terrorism; conduct the work of intelligence, investigation, prevention, response and financial supervision; crack down on terrorist organization and suppress violent terrorist activities in accordance with law.

...

Article 31: The State shall peacefully use nuclear energy and nuclear technology, strengthen international cooperation; prevent nuclear proliferation, improve non-proliferation mechanisms; strengthen the security management, supervision and protection of nuclear facilities, nuclear materials, nuclear activities and disposition of nuclear waste; strengthen responsive emergency systems and emergency capacity building for nuclear accidents; prevent, control and eradicate the danger posed by nuclear accidents on life, the health of citizens and the environment; [and] continuously strengthen the capacity to effectively respond to nuclear threats and nuclear attacks.

Article 32: The State shall peacefully explore and use outer space, the international seabed area and polar regions; strengthen the capacity for secure access, scientific expeditions, development and use [of these areas]; strengthen international cooperation; safeguard the activities, assets and security of other interests of our country in outer space, the international seabed area and polar regions.

Article 33: The State shall take necessary measures to protect the security and legitimate interest of Chinese citizens overseas, organizations and institutions, and prevent the overseas interest of the State from being threatened or damaged.⁴

☛ *Counter-Terrorism Act*

On 27 December 2015, the 18th Session of the Standing Committee of the 12th National People's Congress adopted the *Counter-Terrorism Act of the People's Republic of China* [《中华人民共和国反恐怖主义法》].

Chapter I General Provisions

...

Article 2: The State opposes any form of terrorism, and shall crack down on terrorist organizations and make any person who organizes, plans, prepares to conduct, or conducts terrorist activities, disseminates terrorism, incites others to conduct terrorist activities, organizes, leads, or participates in terrorist organizations, or assists in terrorist activities, accountable for legal responsibility.

The State shall not compromise to any terrorist organization or person, nor provide asylum or grant refugee status to any person who had conducted terrorist activities.

Article 3: In this Act terrorism means those propositions and conducts which attempt to realize political, ideological purposes by the means of violence, destruction, intimidation, by making social terror, endangering public security, violating personal property, or by coercing state organs or international organizations.

...

⁴Translated by the author. The full text of the Act in Chinese is available at: <http://www.npc.gov.cn/wxzl/gongbao/2015-08/27/content_1946096.htm>.

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Article 6: Counter-terrorism shall be conducted in accordance with the law, respect and guarantee human rights, and safeguard the legitimate rights and interests of citizens and organizations.

In counter-terrorism, the citizens' freedom of religious beliefs and ethnic customs shall be respected, and any discriminatory practice on basis of region, ethnicity or religion shall be prohibited.

...

Article 11: The People's Republic of China shall exercise criminal jurisdiction and prosecute as crimes terrorist activities conducted against the State, citizens or institutions of the People's Republic of China outside the territory of the People's Republic of China, or the crimes of terrorist activities provided in the international treaties to which the People's Republic of China is a State party.

Chapter II Identification Terrorists and Terrorist Organisations

Article 12: The State Counter-Terrorism Work Leading Organ shall identify the terrorist organization and person conducting terrorist activities in accordance with Article 3 of this Act, and those identified organizations and persons shall be publicized by the organs of the State Counter-Terrorism Work Leading Organ.

Article 13: Public security organs, national security organs, diplomatic departments of the State Council and provincial counter-terrorism work leading organs shall submit applications to the State Counter-Terrorism Work Leading Organ if they consider it necessary to identify a terrorist organization or a person conducting terrorist activities.

...

Article 15: Any organization or person may apply for review to the organs of the State Counter-Terrorism Work Leading Organ if they are not satisfied with the identification. The State Counter-Terrorism Work Leading Organ shall review these applications in a timely manner, and make a decision whether to maintain or cancel the identification. The review decision is final.

...

Chapter VI Responsive Disposition

...

Article 59: The competent authorities of the State Council for diplomacy, public security, national security, commercial business, finance, supervision of State assets, tourism, transportation shall trigger the proper response if any organ, person, or important facilities of the People's Republic of China has been or potentially could be attacked. The diplomatic departments of the State Council shall coordinate with relevant States to take corresponding measures.

After negotiating with, and obtaining consent of, relevant States, the State Counter-Terrorism Work Leading Organ may organize the personnel of the departments of diplomacy, public security, and national security to conduct responsive disposition work abroad, if any organ, person or important facilities of the People's Republic of China have been subject to serious to terrorist attack.

...

Chapter VII International Cooperation

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Article 68: The People's Republic of China shall co-operate on counter-terrorism with other States, regions, and international organizations in accordance with concluded international treaties, or the principle of equality and reciprocity.

Article 69: The relevant ministries of the State Council, under the authorization of the State Council, shall conduct counter-terrorism policy dialogues, intelligence information communication, enforcement co-operation and international finance supervision co-operation with foreign governments and relevant international organizations on behalf of the Chinese Government.

Without prejudice to our country's law, the local peoples' governments and its competent authorities above the county level in the frontier areas, subject to the approval of the State Council or the central relevant ministries, may conduct counter-terrorism intelligence communication, enforcement co-operation and international finance supervision co-operation with neighbouring States or regions.

Article 70: Judicial assistance, extradition and transfer of the convicted persons relating to terrorist activities shall be enforced in accordance with relevant laws.

Article 71: Subject to the approval of the State Council, the departments of public security and, national security of the State Council may send their personnel abroad to enforce counter-terrorism tasks under the agreement with relevant States.

The sending of personnel abroad to enforce counter-terrorism tasks by the Chinese People's Liberation Army and the Chinese People's Armed Police Force shall be approved by the Central Military Commission.

Article 72: The materials obtained through counter-terrorism international co-operation may be used as evidence in administrative sanctions and criminal proceedings, except those promised by our country to not be used as evidence.⁵

Oral Statements

• Protection of Journalist in Armed Conflicts

On 27 May 2015, a Chinese representative made a statement at the United Nations Security Council open debate on protection of civilians in armed conflict. Regarding journalists, he said

[p]rotecting journalists in armed conflict is an important part of the protection of civilians. Journalists not involved in hostilities and conflicts should be protected under international humanitarian law, just like other civilians. The relevant Security Council resolutions and presidential statements on the protection of civilians have set forth the basic principles and created an important framework for protecting journalists from the harm of conflicts and as such they should be effectively observed. The comprehensive implementation of the aforementioned resolutions and presidential statements by the international community is an effective means for promoting the protection of journalists in armed conflicts.⁶

⁵ Translated by the author. The full text of the Act in Chinese is available at: <http://www.npc.gov.cn/npc/xinwen/2015-12/28/content_1957401.htm>.

⁶ UN SCOR, 7450th mtg, UN Doc S/PV.7450 (27 May 2015) 24. See also: <<http://www.fmprc.gov.cn/ce/ceun/chn/hyyfy/t1267563.htm>>.

☛ Protection of the Environment in Relation to Armed Conflicts

On 6 November 2015, a Chinese representative made a statement on the protection of the environment in relation to armed conflicts at the meeting of the Sixth Committee of the 70th United Nations General Assembly. He said

[t]he Chinese delegation is of the view that the Commission should distinguish between rules applicable to international armed conflicts and those applicable to non-international armed conflicts. While the Commission successfully sorted out the applicable rules in relation to the protection of the environment during international armed conflicts, research on non-international armed conflicts is relatively limited.

Given the current scarcity of international rules directly relevant to non-international armed conflicts and the difficulties involved in obtaining information on relevant practices, it is indeed a challenging task to codify rules for the protection of the environment in the context of non-international armed conflicts. We suggest that the Commission consider limiting the scope of the draft principles to international armed conflicts only. Without the support of international practice, it will be inappropriate to simply transpose rules applicable in international armed conflicts to non-international armed conflicts.⁷

☛ Children and Armed Conflict

On 18 June 2015, a Chinese representative made a statement at the Security Council open debate on children and armed conflict. He said,

[w]e must give priority to resolving the issue of child abductions in armed conflicts. China supports the addition of child abduction in armed conflicts as a criterion for being listed in the annex to the Secretary-General's annual report.⁸

☛ Foreign Terrorist Fighters

On 29 May 2015, a Chinese representative made a statement on 'threats to international peace and security caused by terrorist acts' at the United Nations Security Council meeting. Regarding combating foreign terrorist fighters, he said

[w]e should greatly strengthen international cooperation through multilateral and bilateral mechanisms. We should fully leverage the advantages of the United Nations and relevant international organizations and establish a counter-terrorism database as soon as possible so as to share intelligence resources. Various countries, in particular those bordering on conflict zones, should strengthen border control and law enforcement cooperation so as to cut off the flow of terrorists. Countries should strengthen their cooperation in financial regulation so as to block the channels of terrorist financing... Thirdly, we must remain highly vigilant against the backflow of terrorist fighters, which could pose a serious threat to the countries and regions concerned, and even to international peace and stability. The international community should give its full

⁷ Permanent Mission of the People's Republic of China to the UN, 'Statement by Mr XU Hong' <<http://www.china-un.org/eng/hyyfy/t1327115.htm>>.

⁸ UN SCOR, 7466th mtg, UN Doc S/PV.7466 (18 June 2015) 18.

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attention to that problem, strengthen coordination and effectively respond to the problem of the backflow of foreign terrorist fighters.⁹

☛ Compliance with International Humanitarian Law

On 14 December 2015, a Chinese representative made a statement at the general debate of the 32nd International Conference of the Red Cross and Red Crescent. He said

[t]he international humanitarian law (IHL) holds the bottom line of humanitarian conscience. More actions should be taken to stop and prevent violence against civilians and civil facilities, and to guarantee the safety of the humanitarian volunteers, peacekeepers, and medical and health personnel. We hope that delegates to this Conference would engage with each other constructively, to build the broadest consensus on measures to strengthen the compliance with the IHL.¹⁰

☛ Nuclear Disarmament and Non-Proliferation

On 27 April 2015, a Chinese representative made a statement at the general debate in the 2015 Review Conference of the Parties to the *Treaty on Non-Proliferation of Nuclear Weapons*. He said

[a]s an important component of the post-world war international security system, the Treaty has stood the test of changing international landscape, and made important contribution to the endeavour of upholding international peace, security, and stability.

Firstly, the Treaty, built on the consensus of international disarmament, has effectively forestalled the nuclear arms race, reduced the danger of nuclear war, and served as a strong political and legal foundation for the complete and thorough destruction of nuclear weapons.

Secondly, the Treaty has established the basic principles for non-proliferation of nuclear weapons, and put in place a constantly developing and improving international nuclear non-proliferation regime. This regime, joined in and complied with by most of the countries in the world, has provided solid institutional support for non-proliferation of nuclear weapons.

Thirdly, all States parties to the Treaty are entitled to the rights of peaceful use of nuclear energy. The Treaty, having put forward the principles and framework for promoting relevant international cooperation, makes it possible for the nuclear energy to benefit the people across the world.

China, as a staunch champion for nuclear disarmament process, stands for the complete prohibition and thorough destruction of nuclear weapons and has faithfully fulfilled its nuclear disarmament obligations under the Treaty. Over the decades, China has pursued a nuclear strategy of self-defence and kept its nuclear arsenal at the minimum level required for its national security. China has neither deployed nuclear weapons in any other country nor taken part in any form of nuclear arms races. Among nuclear-weapon States, only China has pledged unconditionally not to be the first to use nuclear weapons and not to use or threaten to use nuclear weapons against non-nuclear-weapon States.

⁹ UN SCOR, 7453th mtg, UN Doc S/PV.7453 (29 May 2015) 21.

¹⁰ Permanent Mission of the People's Republic of China to the UN <<http://www.china-un.ch/eng/hom/t1323933.htm>>.

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China firmly upholds nuclear non-proliferation regime. We oppose the proliferation of nuclear weapons in any form and work for the diplomatic resolution of regional hot-spot nuclear issues. China has been deeply involved in the negotiation process of the Iranian nuclear issue, actively offering its visions and contributing positive energy. We stay committed to realizing the denuclearization of the Korean Peninsula and upholding peace and stability in both the Peninsula and Northeast Asia. China fully supports the international efforts to establish nuclear-weapon-free zones. The National People's Congress of China ratified the *Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia* last week. We have resolved all pending issues of the *Protocol to the Treaty on the Southeast Asia Nuclear-Weapon-Free Zone* with ASEAN countries and are ready to sign the Protocol at an early date. China supports the early convening of an international conference on the establishment of a zone free of nuclear weapons and other weapons of mass destruction in the Middle East.

China actively promotes the peaceful use of nuclear energy. While fully respecting and firmly upholding the legitimate rights of all countries to the peaceful use of nuclear energy, China has taken an active part in and promoted relevant international cooperation. We support the IAEA in playing an important role in this regard and call on developed countries to provide more assistance to developing ones. China also supports IAEA's central role in enhancing nuclear security and safety and assisting all countries to improve their nuclear security and security capacity.¹¹

☛ *Chemical Weapons Convention*

On 30 November 2015, a Chinese representative made a statement at the general debate of the 20th Session of the Conference of State Parties to the *Chemical Weapons Convention*. He said

China stands firmly against the use by anybody under any circumstances of chemical weapons, ... the destruction of chemical weapons abandoned by Japan (Japanese ACWs) in China brooks of no further delay. If Japanese ACWs cannot be completely and thoroughly eliminated, the consequence will be the failure to accomplish the core object of the Convention of building a chemical weapons-free world. Today, large quantities of Japanese ACWs are still threatening and harming Chinese people's lives and properties and the environmental safety in China. Since they are much more harmful to humans and the environment than chemical weapons stockpiles, the destruction of Japanese ACWs is something even more urgent. Up to now, the pace of the destruction of Japanese ACWs has been falling far behind schedule, which causes China grave concern. China urges Japan to fulfil its obligation under the Convention and implement the relevant Council decision dutifully, and increase its inputs to expedite the destruction, so as to complete it at an early date, according to the destruction plan jointly submitted by China and Japan. The destruction of Japanese ACWs is not only an international legal obligation incumbent on Japan, as stipulated by the Convention, but also one of the core tasks of this Organisation. China hopes that, through the Executive Council, the Conference of the States Parties and the Review Conference, the OPCW will keep this issue under review, bring into play its due monitoring role, and ensure its resources inputs in the verification of Japanese ACWs.

¹¹ Permanent Mission of the People's Republic of China to the UN, 'Statement of Vice Foreign Minister Li Baodong' <http://www.un.org/en/conf/npt/2015/statements/pdf/CN_en.pdf>; See also the statement made by the Chinese representative at the thematic discussion on nuclear disarmament at the First Committee of the 70th Session of the UNGA on 20 October 2015 – Permanent Mission of the People's Republic of China to the UN, <<http://www.china-un.org/chn/hyyfy/t1307689.htm>>.

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China has consistently supported the objects and purposes of the Convention, and fulfilled all its obligations under it in earnest. As the State Party with the largest numbers of declared facilities under Article VI of the Convention, China has, to date, received more than 400 OPCW inspections of all categories, with 36 already this year alone, of which there were 27 industry inspections and 9 Japanese ACW inspections. Last May, China and the OPCW jointly held in Beijing the annual meeting of National Authorities in Asia and the first education and outreach seminar in Asia. Last September, China hosted the first assistance and protection workshop for Vietnam, Laos, Cambodia and Myanmar. China has also provided training for another two chemical interns from African States Parties. China is ready to make use of various means, such as seminars, training courses and bilateral exchanges, to assist other States Parties actively in enhancing their capabilities for implementing the Convention.¹²

☛ *Biological Weapons Convention*

In December 2015, a Chinese representative made a statement at the 2015 Meeting of State Parties to the *Biological Weapons Convention*. He said

[t]he improvement of supervision over dual-use bio-research and the prevention of the misuse of bio-science and technology are important aspects of strengthening the Convention. Raising the biosecurity awareness of bio-research personnel and strengthening ethical self-regulation in science are effective measures for the prevention of the risk of misuse of bio-science and technology and for peaceful use of bio-technology. In recent years, various parties have emphasized the importance and necessity of formulating a code of conduct for biological scientist. It is our view that the States Parties can consider the discussion and formulation of a template of code of conduct under the framework of the BWC to guide all countries in the development of their own code of conduct in light of their specific situation. China has already submitted its working paper on relevant proposals to this Meeting and is willing to continue exchanging views with others.

The proper resolving of the non-proliferation concerns and the promotion of international cooperation in bio-science and technology should be the inherent aim for strengthening the Convention. With accelerating pace of globalization, the risk of bio-proliferation is increasingly prominent. Rapid progress in bio-science and technology has led to growing needs of States Parties for international cooperation in bio-science and technology. China believes that the establishment of an equitable and effective export control mechanism under the framework of the Convention will contribute both to the objective of non-proliferation and at the same time to the transfer and exchange of biological items and technology among States Parties, so that all States Parties especially the developing ones can benefit. We have submitted a working paper on relevant proposals to this Meeting and are willing to maintain communication with other delegations.

The appropriate response to treaty violation and prompt international assistance are necessary measures for strengthening the Convention. China supports national assistance from States Parties in accordance with Article VII of the Convention. We support assistance to States Parties with real difficulties from the WHO, the OIE and other relevant international organizations in the health and humanitarian field upon request from States Parties in accordance with their respective mandates. We positively comment

¹² Organisation for the Prohibition of Chemical Weapons, Conference of States Parties, 20th sess, OR C-20/NAT.24 (30 November 2015) <https://www.opcw.org/fileadmin/OPCW/CSP/C20/national_statements/c20nat24_e_.pdf>.

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on the proposals made by South Africa, the UK, India and France and others for strengthening Article VII, and welcome efforts from all parties on such a basis to agree on specific measures for strengthening Article VII. The establishment of an equitable, reasonable, effective and feasible mechanism for implementation is the fundamental way to strengthen the BWC. China supports strengthening national implementation on a progressive and voluntary basis in light of each country's national condition. We always maintain that the conclusion through negotiations of a protocol which includes verification mechanism and comprehensively increases the effectiveness of the BWC is the best compliance mechanism for the implementation of the Convention. We support Russia's proposal to restart negotiations on the protocol and join as a co-sponsor. We welcome new measures proposed by all sides to strengthen the Convention, but hope that attention will be given to their legal and technical feasibility. Investigation of alleged use of biological weapons is complex and sensitive. States Parties can lodge a complaint to the Security Council in accordance with Art. VI and the Security Council will decide on the start of an investigation and preside over it.¹³

☛ Lethal Autonomous Weapon Systems

On 12 November 2015, a Chinese representative made a statement at the 2015 Meeting of the High Contracting Parties to the *Convention on Certain Conventional Weapons*. Regarding lethal autonomous weapon systems, he said

[t]his issue is very complicated as it involves political, economic, military, technical, legal, ethical and various other factors. The international community should attach high importance to this issue, and have in-depth discussions on relevant aspects including definition, scope, applicability of international law etc, so as to gradually deepen understanding, build up consensus while refraining from making hasty decisions. At the current stage, China supports further discussions under the framework of the Convention. We hope that such discussions will be in line with the purposes and objectives of the Convention, take into full consideration of the legitimate concerns of all countries, in particular the developing countries, and ensure equal and inclusive participation by all Parties concerned.[.....]¹⁴

☛ Anti-Vehicle Landmines

On 12 November 2015, a Chinese representative made a statement at the 2015 Meeting of the High Contracting Parties to the *Convention on Certain Conventional Weapons* ('CCW'). Regarding anti-vehicle landmines, he said

[a]nti-vehicle landmines (AVL) remains an important part of many countries' legitimate means of self-defence. As a matter of fact, the civilian casualties caused by AVL can by no means be compared with that caused by anti-personnel landmines. Should the Amended Protocol be implemented faithfully and universally, the humanitarian concerns

¹³ Meeting of the States Parties to the Biological Weapons Convention (December 2012) <[http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/1D309FCFBC2CF7C9C1257F1C0034038A/\\$file/2015+MSP+China+BWC+statement.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/1D309FCFBC2CF7C9C1257F1C0034038A/$file/2015+MSP+China+BWC+statement.pdf)>.

¹⁴ Permanent Mission of the People's Republic of China to the UN, 'Statement by Ambassador Fu Cong' (12 November 2015) <<http://www.china-un.ch/eng/hom/t1314777.htm>>.

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caused by AVL could be addressed properly. At this stage, we feel it is unnecessary to restart discussion on this topic.¹⁵

• *Amended Protocol II to the CCW*

On 11 November 2015, a Chinese representative made a statement at the 17th Annual Conference of the High Contracting Parties to *Amended Protocol II* of the CCW. He said

[t]he Chinese military continues to destroy as planned obsolete anti-personnel landmines and other explosive devices which do not meet the requirements of the Protocol. It carries out compliance training and awareness campaigns. Training courses on stockpiled landmines destruction technology have been conducted for military personnel. In the past year, over 1500 officers and soldiers received training. A series of training materials were compiled and published. An on-line training system on compliance was developed. Moreover, good progress has been made in R&D for better detection and demining equipment as well as safe and clean destruction technologies.¹⁶

• *Protocol V to the CCW*

On 9 November 2015, a Chinese representative made a statement at the Ninth Conference of the High Contracting Parties to *Protocol V* to the CCW on explosive remnants of war ('ERW'). He said

China pays great attention to ERW clearance and destruction. In the past year, the Chinese Military and Public Security organs have continued as planned the clearance and destruction of ERWs such as abandoned and old artillery shells, and the Public Security organs have destroyed and handled over 35,000 pieces of ERWs of various types. China has established a comprehensive management system for explosives, and in accordance with law subjects explosives to control regimes such as the control of licenses, control according to categories, lifecycle monitoring, risk assessment and accountability. The Chinese Public Security authorities have set up an information system for explosives of civilian use, and have established strict registration of and supervision over all stages of the lifecycle, such as production, storage, transport, and transfer. These measures have effectively prevented the illegal outflow of explosives, thus making a positive contribution to the protection of people's life and property as well as regional peace and stability... In China, every year we still discover a large number of ammunitions of various types abandoned by foreign invaders, which constitute a grave threat to people's life and property. China always maintains that the international community should establish the principle of "the user clears". Countries that have left behind ERWs in other countries should shoulder their due historical responsibility to provide necessary financial resources and technology for clearance, so that the affected countries can be free from the scourge of ERWs at an early date.¹⁷

¹⁵ Ibid.

¹⁶ Permanent Mission of the People's Republic of China to the UN, 'Statement by the Chinese Delegation' (11 November 2015) <<http://www.china-un.ch/eng/hom/t1314782.htm>>.

¹⁷ Permanent Mission of the People's Republic of China to the UN, 'Statement by the Chinese Delegation' (9 November 2015) <<http://www.china-un.ch/eng/hom/t1314780.htm>>.

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☛ Ottawa Convention

On 30 November 2015, a Chinese representative made a statement at the 14th Meeting of the States Parties to the Ottawa Convention as an observer. He said

[t]he Chinese Government always attaches great importance to humanitarian concerns caused by anti-personnel land mines (APLs). We support the international efforts to address the humanitarian problems caused by APLs. China appreciates the humanitarian spirit embodied in the Convention and endorses the purposes and objectives of the Convention. Although China is not a party to the Convention, it has for many years maintained close exchanges and cooperation with States parties, participated in meetings of the States parties and the review conferences of the Convention as an observer state. Since 2005, China has voted in favour of the UNGA resolutions on the implementation of the Ottawa Mine Ban Convention for consecutive years, which demonstrate our affirmation and endorsement of the important role of the Convention... China has always consistently participated in international conventional arms control process in a constructive manner. As a high Contracting Party to the Amended Protocol II of CCW, China has faithfully honoured its obligations under the Protocol. Since our declaration in 1996 of the moratorium on the export of APLs that do not meet the provisions of the Protocol, China has always adhered to the commitment. China attaches great importance to capacity-building and has committed considerable human and financial resources in this regard. We have trained numerous skilled technical experts through initiatives such as organizing training courses and conducting demining operations. We have also made efforts on improving demining equipment and enhancing R & D in safe and clean technology of the destruction of mines and other explosives devices. China has actively carried out demining work such as mine clearance and victim assistance on its territory. After two previous massive demining campaigns in the border area in 1990s, China has recently launched the third demining campaign in an area of 50 square kilometres along China-Vietnam border. This exercise is estimated to be completed in 2017... While addressing domestic landmine problems, China attaches great importance to the international humanitarian demining assistance. In September this year, President XI Jinping of China announced at the Summit on Peacekeeping during the 70th GA that China will host 10 demining assistance projects in the next 5 years. Since 1998, China has provided demining assistance to more than 40 countries in Asia, Africa and Latin America by hosting training courses and donating demining equipment, having trained nearly 500 demining operators. This year, China hosted a training course on mine clearance for Myanmar that trained 30 demining operators and donated a batch of demining equipment. China has also concluded a joint demining training course for Ethiopia, Zambia, Zimbabwe and Sudan, which trained more than 30 demining operators. In addition, China contributed start-up fund and office facilities to the ASEAN mine action centre and will provide a batch of demining devices and office equipment to Cambodia at the end of year. In the future, China will honour its commitment in the spirit of humanitarianism and continually provide assistance to the mine-affected countries and the victims within its own capacity...¹⁸

☛ Convention on Cluster Munitions (CCM)

On 7th September 2015, a Chinese representative made a statement at the First Review Conference of the *Convention on Cluster Munitions*. He stated,

¹⁸ Permanent Missions of the People's Republic of China to the UN, 'Statement by the Chinese Observer Delegation' (30 November 2015) <<http://www.china-un.ch/eng/hom/t1320321.htm>>.

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China has always been a constructive participant in the process of international conventional disarmament and a staunch supporter of international efforts to address humanitarian concerns caused by cluster munitions. However, China ascribes to the goal and principles of the Convention and highly appreciates the humanitarian spirit embodied in the Convention. For years, China has maintained close exchanges and cooperation with member states and ISU of the Convention, and attended all the previous Meetings of States Parties. China has been actively engaged in the effort to address humanitarian concerns caused by cluster munitions under the framework of the Convention on Certain Conventional Weapons. As a state party to the CCW and all its annexed protocols, China has been faithfully fulfilling obligations under the Protocol in terms of landmine and ERW clearance, stockpile destruction and victim assistance, contributing in its own way to addressing this humanitarian concern... China is of the view that full compliance with the UN Charter, non-interference in other countries' internal affairs, and resolution of disputes through political and diplomatic means are fundamental safeguards against damages caused by cluster munitions. Latest developments in West Asia and North Africa demonstrate that blatant interference by force, irresponsible transfer of weapons to non-state actors are major causes for persisting regional turbulence. Against the current background, to prevent weapons inventory in turmoil countries from falling into the wrong hands, and to deny extremist and terrorist organizations access to weapons including cluster munitions, is of paramount importance to regional peace and security.

As the old Chinese saying goes, it is up to him who made the tie to untie. To clear cluster munitions remnants at an early date, it is of vital importance to explicitly establish the principle that the users of cluster munitions, particularly those who used cluster munitions on other countries' territory, shall bear the primary responsibility for their clearance. At the same time, stark reality on the ground calls for enhanced international cooperation with emphasis on mobilizing more support for developing countries severely affected by cluster munitions and providing victims with timely and effective assistance.¹⁹

☛ **International Criminal Court (ICC)**

On 6 November 2015, a Chinese representative made a statement on the Report of the International Criminal Court at the 70th Session of the United Nations General Assembly. He said:

China has always attached importance to the significant role of the ICC in maintaining international peace, security and justice, prosecuting serious international crimes, and promoting the development of international law, and has participated as an observer State in successive sessions of the Assembly of States Parties to the Rome Statute.

The ICC and the United Nations are independent yet related organizations with the common interest of preventing and punishing serious international crimes that endanger international peace and security. The work of the two can therefore be mutually reinforcing. The ICC and the United Nations, and the Security Council in particular, should respect each other's functions; intensify cooperation within the legal framework defined by the Charter of the United Nations, relevant resolutions of the General Assembly and the Security Council, and the Relationship Agreement between the United Nations and the International Criminal Court; and build a constructive partnership.

¹⁹ First Review Conference of the Convention on Cluster Munitions, 'Statement by Mr Ma Shengkun' (7 September 2014) <https://www.clusterconvention.org/files/2015/09/China_High-Level-Segment1.pdf>.

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The recent work of the ICC has demonstrated that prosecutors are becoming more cautious and pragmatic in their investigations and prosecutions, and the role of the Court in international affairs is enjoying increasing attention. China hopes the Court will continue to perform its duties prudently in order to ensure that criminal justice is not achieved at the expense of peace, stability and national reconciliation. In addressing the issue of the immunity of Heads of State, we hope that the Court will strictly abide by existing international law and take into full consideration the legal claims of certain countries so as to avoid obstructing the performance by State leaders of their duties.

The Chinese delegation notes that 24 State parties have ratified the amendment to the Rome Statute on the crime of aggression. Given that the crime of aggression has a bearing on international peace and security, the amendment should be implemented in an orderly manner within the framework of international law established by the United Nations Charter. The paramount authority of the Charter must be safeguarded, and any other international legislation must conform to its provisions. Regarding the content of the amendment and the timing of its entry into force, China believes that parties should engage in full consultations to seek maximum consensus with a view to reaching the widest possible agreement. Peace, justice and the rule of law are the shared vision and aspiration of human society. China looks forward to on-going contributions by the Court to that lofty goal.²⁰

In the general debate of the 14th Session of the Assembly of State Parties to the Rome Statute on 18-26 December 2015, a Chinese representative made a statement as an observer State. She said

The effective and successful operation of the ICC depends to a great extent on the cooperation from States. For States to offer their cooperation, it is extremely important for the Court to make its request of cooperation in accordance with the applicable principles of international law as well as the provisions of the Rome Statute, including its Article 98, while at the same time, to avoid impose extra obligations on States. For non-States Parties, the legitimate rights of them under international law should be respected by the Court. As to the States Parties, we understand that they bear treaty obligations under Rome Statute to cooperate. At the same time, we are of the view that the Court also needs to implement the Rome Statute in its integrity. The articles in the Rome Statute which make certain limitations upon the request of the cooperation such as Article 98 should not be ignored. The referral of a situation by the Security Council does not automatically abolish the immunity of head of state under rules of general international law. Second, on the amendment to the Rome Statute on crime of aggression. Given that the crime of aggression concerns international peace and security and the mandate of the Security Council, China is of the view that the Amendment should be reviewed within the framework of international law established by the UN Charter and shall not negatively impact upon the functions and powers of the Security Council. This is not only the requirement of the UN Charter, but also the dictation of the Rome Statute itself. Having said that, we believes that the content of the Amendment and its procedure of entry into force, should be in strict adherence to the relevant provisions of the Rome Statute, and based on maximum consensus with a view to reaching the widest possible agreement...²¹

²⁰ UN GAOR, 70th sess, 49th plen mtg, UN Doc A/70/PV.49 (6 November 2015) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/354/01/PDF/N1535401.pdf?OpenElement>>.

²¹ International Criminal Court, Assembly of States Parties, <https://www.icc-cpi.int/iccdocs/asp_docs/ASP14/GenDeb/ASP14-GenDeb--OS-China-ENG.pdf>.

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- ☛ International Criminal Tribunal for the former Yugoslavia ('ICTY') and International Criminal Tribunal for Rwanda ('ICTR')

On 9 December 2015, a Chinese representative made a statement on the ICTR and ICTY at the United National Security Council meeting. He said

China welcomes the ICTR's last report, and congratulates the Tribunal on completing its work and its preparations to close down by the end of the year. Through its judicial activities over the past 21 years, the ICTR has prosecuted some of the most serious international crimes. Meanwhile, it has also promoted the development of international law, particularly international criminal law, and has proudly set records in many areas. It has also played a role in promoting peace and reconciliation in the Great Lakes region... China would like to congratulate Judge Agius on his election to the presidency of the I [ICTY], and we welcome the fact that the Tribunal will reach a verdict on two of its appeal cases in mid-December. We have also noted that a number of cases have been delayed, for various reasons, and that their initial trials will not be completed within the expected schedule. We hope that under President Agius's leadership, the ICTY will continue to fully implement the relevant resolutions of the Security Council and, while ensuring judicial fairness as a precondition, will rationalize its work arrangements and use of the available resources, overcome its difficulties and complete all of its work as soon as possible... We hope that the Council's first review of the Mechanism will highlight the progress it has made and the areas that still need improvement, including those related to its request for keeping the minimum levels necessary for staffing and financial resources, in order to urge the Mechanism to continue to abide by Council resolutions and conduct its work efficiently and cost-effectively.²²

- ☛ Scope and Application of Universal Jurisdiction

On 20 October 2015, a Chinese representative made a statement at the 70th Session of the United Nations General Assembly on scope and application of the principle of universal jurisdiction. He said

[t]he Chinese delegation wishes to reiterate that a state must strictly follow international law in establishing and exercising universal jurisdiction. With the exception of piracy, there exist currently notable differences and controversies among member states on whether universal jurisdiction exists in other cases and on its scope and application conditions. Relevant rules of customary international law have yet to emerge. In the meantime, universal jurisdiction is different from the obligation of "extradite or prosecute" established by a series of international treaties against transnational crimes. It is also different from the jurisdiction explicitly granted to existing international judicial bodies by specific treaties or other legal instruments.

In the absence of an international consensus on the definition, scope and application of universal jurisdiction, states should refrain from going beyond the current international law and seeking to unilaterally claim and exercise universal jurisdiction not explicitly permitted by the current international law, so as to effectively safeguard the basic principles of international law and the common interest of the international community, and ensure stable and healthy development of international relations.²³

²² UN SCOR, 7574th mtg, UN Doc S/PV.7574 (9 December 2015) 22.

²³ Permanent Mission of the People's Republic of China to the UN, 'Statement of Mr Zhou Wu' (20 October 2015) <<http://www.china-un.org/eng/hyyfy/t1307695.htm>>.

• Immunity of State Officials from Foreign Criminal Jurisdiction

On 6 November 2015, a Chinese representative made a statement on the topic of immunity of state officials from foreign criminal jurisdiction at the meeting of the Sixth Committee of the 70th UNGA. He said

[o]n the whole, we endorse the provision of draft article 6 on the scope of immunity *ratione materiae*. Similarly, with respect to subparagraph (f) of draft article 2, which states that an “act performed in an official capacity” means “any act performed by a State official in the exercise of State authority”, we concur with this provision as it stands. Here I would like to make a few specific comments:

First, the “exercise of State authority” should be interpreted in a broad sense. As my delegation stated during last year’s deliberation by the Sixth Committee on the definition of State official as any individual who “represents the State or who exercises State functions”, the definition of an act as “exercise of State authority” should be made on a case-by-case basis in accordance with the constitutional system and legislation of the State of nationality as well as the circumstances of the case in question, rather than determined subjectively or arbitrarily by the forum State. In addition, we would like to seek the Commission’s clarification on the difference between the phrase “exercise of State authority” in this subparagraph and the phrase “exercise of State functions” in subparagraph (e) of the same article as part of the definition of State official.

Secondly, according to paragraph 1 of draft article 6, the only yardstick in determining whether acts of State officials enjoy immunity *ratione materiae* should be whether such acts are “performed in an official capacity”. However, the reports of the Special Rapporteur and the Commission made reference to the view that ultra vires acts, acts constituting serious international crimes, and *acta jure gestionis*, or acts performed in an official capacity but exclusively for personal benefit, do not qualify as acts “performed in an official capacity” and therefore are not covered by immunity *ratione materiae*. China believes that these views are not in line with the relevant positive international law, and are even in clear breach of relevant rules. For example, the ultra vires character of an act does not affect its recognition as an act “performed in an official capacity”. Article 7 of the Draft articles on Responsibility of States for Internationally Wrongful Acts adopted by the Commission clearly provides that an act that exceeds its authority or contravenes instructions shall nonetheless be considered an act of the State.

Finally, the Commission may wish to consider clarifying in the draft article or the commentary thereto that immunity rules are procedural rules and do not pertain to substantive rules of international law that deal with the legality of acts or the issue of accountability. The Special Rapporteur has indicated her intention to address the exceptions to immunity of State officials in her report next year. The Chinese delegation wishes to reiterate that the immunity of State officials is based on the principle of sovereign equality of States and reflects the mutual respect among nations. Immunity provisions are procedural rules and should not be associated with impunity. The International Court of Justice has already made clear this point in its rulings in the Arrest Warrant case and the Jurisdictional Immunities of the State case.²⁴

²⁴ Permanent Mission of the People’s Republic of China to the UN, ‘Statement of Mr Xu Hong’ (6 November 2015) <<http://www.china-un.org/eng/hyyfy/t1327115.htm>>.

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☛ Crimes against Humanity

On 6 November 2015, a Chinese representative made a statement on the topic of crimes against humanity at the meeting of the Sixth Committee of the 70th United Nations General Assembly. He said

[f]irst of all, codification of draft articles should be based on a thorough review of the practice of States. In the report of the Special Rapporteur and the draft articles adopted by the Commission, a great deal of attention is given to the practice of international judicial organs, and, by comparison, little reference is made to the general practice and *opinio juris* of States. For instance, draft article 2 has removed the traditional qualifier of “in time of war” for “crimes against humanity”. Such an approach is based primarily on the practice of international judicial institutions and fails to consider whether the practice of States has reflected a general recognition that crimes against humanity under international law need not be committed during a war. In addition, draft article 3, in establishing the definition of “crimes against humanity”, has adopted verbatim the provision of the Rome Statute of the International Criminal Court, effectively regarding the latter as a universally accepted definition. In fact, the definitions of crimes as contained in the Rome Statute should be interpreted in conjunction with the Elements of Crimes adopted by the Assembly of States Parties. Moreover, in the negotiation of the Rome Statute, there were disagreements over the definitions and elements of various crimes, including crimes against humanity, which partly explains why some States are not yet party to the Rome Statute. It is therefore necessary for the Commission to review the positions and practice of States in a more comprehensive manner in order to lay down a really sound basis for the said definition.

Secondly, with respect to the list of specific crimes, full consideration should be given to differences among national legal systems. Draft article 3 contains a list of specific acts which constitute crimes against humanity, including “enforced disappearance of persons”. However, in many States, especially those not party to the Rome Statute, the crime of “enforced disappearances” may not exist in their domestic law. The enforcement of relevant provisions by these States, and the harmonization of domestic law with the relevant rules of international law are subjects that merit the attention of and discussion by the Commission.

Thirdly, it warrants further consideration whether the obligation of States to prevent crimes against humanity as currently drafted is too broad. Paragraph 1 (b) of draft article 4 provides that States are under obligation to cooperate with “other organizations” as appropriate to prevent crimes against humanity. According to the commentary, “other organizations” include non-governmental organizations. However, the commentary is silent on the legal basis of such an obligation and the practice of States in this respect. In light of the above, the Commission should give cautious consideration as to whether it is appropriate to impose upon States such an obligation under international law.²⁵

LIJIANG ZHU

²⁵ Permanent Mission of the People’s Republic of China to the UN, ‘Statement of Mr Xu Hong’ (6 November 2015) <<http://www.china-un.org/eng/hyyfy/t1327115.htm>>.